INDEX.

	PAGE
Agreed Statement under Rule #76 of Federal Rules of Civil Procedure	1
Amended Complaint	2
Notation with reference to Powers of Attorney	6
Answer of defendant	7
Second Defense	7
Third Defense	10
Fourth Defense	12
Fifth Defense	13
First Additional Defense	23
Second Additional Defense	23
Notation relative to plaintiffs' Motion filed to the Fifth Defense, etc.	27
Motion of Plaintiffs' to Strike	27
Motion to strike Third and Fourth Defense	27
Motion to strike Fifth Defense	29
Excerpts from Order re Fifth Defense	29
Motion of plaintiffs' to strike the Fifth Defense as Amended	29
Order dated 10/2/42, denying Motion of Plaintiffs to Strike Portions of Defendant's Amendment to Answer	37
TRANSCRIPT OF TESTIMONY:	
Case called for hearing, etc.	40
Evidence for Defendant:	
Testimony of John Snively, Jr.	41
Alfred M. Tilden	42
B. C. Cook	43

INDEX—Continued.

PAGE

Transcript of Testimony—(Continued):
Evidence for Defendant—(Continued):
Testimony of Jesse Roberts 54
Jesse Roberts 54
H. J. McKeown 56
Harry Strohm 57
John Weatherford 59
Mrs. V. J. Martin 63
C. C. Spencer 65
Mrs. Alexander Warren 67
J. A. Langley 70
N. H. Stiles 73
Mrs. H. Evanhouse 75
N. A. Mixon 77
James Edwards 80
R. M. Bieling 82
Julius Mattsen 84
Tom Keegan 85
Paul Swanson 87
Ralph Smith 88
D. J. Costner 90
R. B. Huffaker 91
William P. Hickman 113
Exhibit (not marked)—Populations of some of the towns in Florida according to the 1930 and 1940 Federal Census 141

Colloquy between Counsel and Court 142
Stipulation of counsel relative to the facts alleged in the 3rd Paragraph of the 5th Defense, as amended, filed by defendant 144

INDEX—Continued

PAGE

Transcript of Testimony—(Continued):
Evidence for Defendant—(Continued):
Stipulation of Counsel re number of employees in the canning factory engaged in the operation of peelers, etc. 146
Stipulation of Counsel re the operation of the establishment in the two seasons involved are 1938-1939 and 1939-1940 146

Evidence for Plaintiffs:
Testimony of Mrs. Sally Baker 148

Exhibits:
Exhibit marked Defendant's "A"—Amended Articles of Incorporation of Holly Hill Fruit Products, Inc. 150
Exhibit marked Defendant's "B"—By-Laws of Holly Hill Fruit Products, Inc. 162
Exhibit marked Defendant's "C"—Photostat of Map showing distances from Davenport 175
Exhibit marked Defendant's "D"—Photostat of Map showing location of groves of members of Holly Hill Fruit Products, Inc. 176
Exhibit marked Defendant's "E"—Form Letter, Holly Hill Fruits Products, Inc., to Harry Strohm, dated 10/26/42 with record of fruit purchasers 177
Exhibit marked Defendant's "F"—Tabulation of fruit handled by Holly Hill Fruit Products, Inc., for the 1938-1939 and 1939-1940 Citrus Season 180

INDEX—Continued

	PAGE
Transcript of Testimony—(Continued):	
Exhibits—(Continued):	
Exhibit marked Defendant's "G"—Tabulation of fruit received in 1939-1940 season showing distances, Grapefruit Distributors, Inc.	181
Exhibit marked Defendant's "H"—Tabulation of fruit received in 1938-1939 season showing distances, Grapefruit Distributors, Inc.	184
Exhibit marked Defendant's "I"—Photostat of Map of Florida showing air distances from location of Holly Hill Fruit Products, Inc.	185
Findings of Fact and Conclusions	186
Order on Pleadings, dated 1/26/43	198
Motion of Plaintiffs for Summary Judgment	202
Petition of defendant for Re-Hearing	202
Order dated 2/24/43 on Pre-Trial Conference	208
Final Judgment, entered 4/9/43	212
Notice of Appeal	215
Appellant's Statement of Points on Appeal	216
Agreement of Counsel relative to Agreed Statement under Rule #76 of Federal Rules of Civil Procedure	221
Order approving Agreed Statement under Rule #76 of Federal Rules of Civil Procedure	222
Clerk's Certificate	223
Proceedings in U. S. C. C. A., Fifth Circuit	224
Minute entry of argument and submission	224
Opinion, Holmes, J.	224
Concurring opinion, Waller, J.	228
Judgment	231
Motion and order staying mandate	232
Order allowing certiorari	233

IN THE DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION.

WILMA ADDISON, ERNESTINE C. LYLES, EDGAR CAMPBELL, SALLIE BAKER, and LUTHER BLACK, ET AL.,

Plaintiffs,

versus No. 441.

HOLLY HILL FRUIT PRODUCTS, INCORPORATED, a Florida. Corporation,

Defendant.

AGREED STATEMENT OF FACTS ON APPEAL.

Pursuant to the terms of Rule 76 of the rules of Civil Procedure, the parties hereto, believing that the questions presented by the appeal herein of the defendant from the final judgment entered in the District Court on April 9, 1943 can be determined by the Circuit Court of Appeals of the Fifth Circuit without an examination of all the pleadings, evidence and proceedings in the Court below, present this statement of the case showing how the questions arose and were decided in the District Court and setting forth so many of the pleadings, stipulations, and evidence as are essential to a decision by said Circuit Court of Appeals as follows:

1. Five named employees as individuals, and as agents and representatives of other employees, filed their complaint against the defendant for underpay and overtime compensation, liquidated damages, attorneys fees, and costs under the Fair Labor Standards Act of 1938 covering

two citrus canning seasons—the season of 1938-39 and the season of 1939-40.

The said amended complaint being as follows:

1. Wilma E. Addison, Ernestine C. Lyles, Edgar Campbell, Sallie Baker and Luther Black, plaintiffs, in their capacities as individuals and as agents and representatives for the employees listed in Exhibit No. 1 attached hereto and made a part hereof, and Holly Hill Fruit Products, Inc., a Florida Corporation, having its principal office and place of business in Davenport, Polk County, Florida, defendant in an action to recover liabilities imposed upon said defendant in favor of plaintiffs and those whom they represent, by Section 16-b of the Fair Labor Standards Act of 1938, for *under-pay* and *over-time* compensation, liquidated damages, attorneys' fees, and costs incurred by defendant by virtue of said Act in and during the period dating from the 24th day of October, 1938, for, and including, the two citrus seasons of 1938-1939 and 1939-1940.

2. Jurisdiction of this cause is conferred on this Court by the provisions of section 16-b of said Fair Labor Standards Act of 1938 (29 U. S. C. A. 216-b) and Section 41 (8) 28 U. S. C. A. by which latter section jurisdiction is conferred upon this Court as to "all suits and proceedings arising under any laws regulating commerce", said Fair Labor Standards Act of 1938 being a law regulating commerce; and also by the provisions of Section 41 (9) 28 U. S. C. A., by which section jurisdiction is conferred on this court "of all suits and proceedings for the enforcement of penalties *** incurred under any law of the United States" to the extent that the liability imposed by said Fair Labor Standards Act of 1938 is in the nature of a penalty.

3. The defendant is a Florida Corporation, having its principal office and place of business at Davenport, Polk County, Florida, and also has an agent in said County and an office therein, upon whom process by this Court may be served.

4. Plaintiffs have been duly designated as agents and representatives of and for those of the defendant's employees listed in Exhibit No. 1 attached hereto and prayed to be taken as a part hereof, and under the authority of said Fair Labor Standards Act of 1938, have full power and authority to maintain this action in their behalf to recover the liabilities imposed by said Act for its violation.

5. Defendant was, during the citrus seasons aforesaid, namely, 1938-1939 and 1939-1940, and ever since said time has been, and still is, engaged in the canning and/or processing and/or manufacturing into commercial by-products of citrus fruits for shipment in commerce, a substantial part of which was, during said period covered by this suit, shipped by said defendant to points outside the State of Florida, and, during said period, it derived a substantial part of its produce from points beyond and outside of the "area of production" as defined by the Administrator of the said Fair Labor Standards Act of 1938, as follows:

(a) for the period from October 20, 1938 to April 19, 1939 as defined in his regulation of October 20, 1938.

(b) for the period from April 20, 1939 to June 17, 1939 as defined in his modified regulation of April 19, 1939.

(c) for the period from June 17, 1939 to the end of the 1940 citrus fruit season as defined by his regulation of June 15, 1939."

6. Plaintiffs show unto this Court that, in each of the work weeks during the said two citrus seasons of 1938-1939 and 1939-1940, defendant employed a large number of persons, including plaintiffs and all the persons listed in Exhibit No. 1 hereto, who have designated the plaintiffs as agents and representatives, for a part of the time, in the essential processes and operations necessary to the canning and/or converting into commercial by-products of citrus fruits for commerce, and a substantial part of such products so worked on by said persons, including plaintiffs and those whom they represent as agents as aforesaid, was shipped by the defendant to points outside of the State of Florida and sold to dealers for shipment to points outside said State.

7. During and throughout said period, the plaintiffs and the persons described in Exhibit No. 1 hereto, who have designated the plaintiffs as their representatives and agents, have been paid by the defendant wages at rates less than the statutory minimum rates fixed for their employment for the processing of citrus fruits in interstate commerce as aforesaid, namely, less than 25¢ an hour for the citrus season of 1938-1939 and less than 30¢ an hour for the citrus season of 1939-1940. By failing and refusing to pay to its said employees wages at a rate less than said rate during said period, said defendant violated the provisions of Section 6 of the Fair Labor Standards Act.

8. During all of said periods, the said defendant employed plaintiffs and the persons described in Exhibit No. 1 hereto who have designated the plaintiffs as their representatives and agents and who were then and there engaged in the processing of citrus fruits for interstate commerce as aforesaid, for work weeks of longer than 44 hours in the citrus season of 1938-1939 and longer than

42 hours in the 1939-1940, and have failed to compensate said employees for said employment in excess of said minimum hours per week at rates not less than one and one-half times the minimum statutory rates at which they were employed, and, in fact, have failed and refused to compensate them for such excess hours at any rate greater than the regular rates at which they were employed. By employing said employees for work weeks in excess of said hours during said periods without compensating them for their employments in excess of the said hours in such work weeks at rates not less than one and one-half times the regular rates at which they were employed, or the minimum statutory rates at which they were employed, the defendant has violated and is violating the provisions of Section 7 of the Fair Labor Standards Act.

9. During said periods, namely, the citrus seasons of 1938-1939 and 1939-1940, the defendant has sold, shipped, delivered, transported and offered for transportation in interstate commerce from said canning plant at Davenport, Florida, to, into and through states other than the State of Florida, goods processed in said canning plant in the processing of which all the plaintiffs were employed in violation of Sections 6 and 7 of the act, as alleged in paragraphs 7 and 8 hereof.

10. During said period, namely, the citrus fruit seasons of 1938-1939 and 1939-1940, the defendant has shipped, delivered and sold, with knowledge that shipment, delivery and sale thereof in interstate commence from points within the State of Florida to, into, and through, other states was intended, citrus fruits processed in said canning plant at Davenport, Florida, in the processing of which all of the

plaintiffs were employed in violation of Sections 6 and 7 of the Act as alleged in paragraphs 7 and 8 hereof.

(Paragraphs 11, 12, 13 and 14 eliminated).

15. The names, addresses, hours worked by each, rates at which each of them were employed, wages earned by them for said over-time, as well as for regular time; amounts and purposes for which weekly deductions were made from earnings and net amounts paid weekly to all of the employees of said defendant represented by the plaintiffs herein are matters peculiarly within the knowledge of the defendant and are not matters of which the plaintiffs have complete and accurate records, and the plaintiffs, as a part of the relief sought in this case, seek and pray access to said records and full and complete information in reference to said matters shown on the records which the said defendant company is required by said Act to be kept.

16. Plaintiffs therefore demand judgment against the defendant for and on behalf of all the plaintiffs and all other persons listed on Exhibit No. 1 attached hereto and prayed to be taken as a part hereof, all of whom have designated the plaintiffs as their representatives and agents in the collections of said sums, said judgment to be against said defendant company for *underpay, overtime*, liquidated damages, attorneys' fees and court costs, as to each person severally in accordance with the fair standards of labor established by said act, and the employment of each of said persons by the defendant.

On February 9, 1942, the plaintiffs filed Powers of Attorney for each of the hour employees named in the final judgment entered on April 9, 1943 appointing Wilma Addison, Ernestine Lyles, Edgar Campbell, Sallie Baker,

and Luther Black as their attorneys in fact authorizing the prosecution of this cause on behalf of said plaintiff-employees.

On April 11, 1943, defendant filed its Answer as follows:

(The Court struck the First Defense and no point is raised in this Court).

Second Defense.

1. This defendant admits the allegations of Paragraph I of said amended complaint except that the defendant denies that the plaintiffs named therein are duly authorized as agents and representatives to bring this action in behalf of the persons listed in Exhibit 1 attached to said complaint and made a part thereof.

2. This defendant denies this Court has jurisdiction of this cause under the statutes set forth in Paragraph II of said amended complaint.

3. The defendant admits that it is a Florida Corporation, having its principal place of business at Davenport, Florida, Polk County, and that it has an agent in said county and an office therein, upon whom process by this Court may be served.

4. The defendant denies that plaintiffs have been duly designated as agents and representatives of and for those of the defendant's employees listed in Exhibit No. 1 attached to the complaint, and the defendant denies that the plaintiffs have full power and authority, or any authority whatever, to maintain said action in their behalf to recover the liabilities imposed by the Fair Labor Standards Act for violation of said act.

5. This defendant admits that it was during the citrus seasons 1938-1939, 1939-1940 engaged in the canning of citrus fruits for shipment in commerce and that a substantial part thereof was, during said two seasons, shipped by said defendant to points outside of the State of Florida, but this defendant denies it was engaged in processing or manufacturing into commercial by-products of citrus fruits during said times alleged.

"The defendant separately preserves its defense based upon the provisions of Section 13 (a) (10) of the Act, hereinafter set forth as the Fourth Defense to the complaint.

6. This defendant admits that during its work weeks of the two seasons named, it employed a large number of persons but denies that the plaintiffs and all of the persons listed in Exhibit 1 were employed for each of said workweeks or for part of the time, and denies that the plaintiffs, or persons listed in Exhibit 1, were employed in the essential processes and operations necessary to the canning and/or converting into commercial by-products of citrus fruits for commerce and denies that a substantial part of its products worked on by the plaintiffs, or the persons listed on Exhibit 1, or any of them, were shipped to points outside the State of Florida during each of the workweeks or sold to dealers for shipments outside the State during each of said workweeks.

7. The defendant denies that during and throughout the said citrus seasons, the plaintiffs and the persons described in Exhibit No. 1 of the complaint, have been paid by the defendant wages at rates less than the statutory minimum rates fixed for their employment for the processing of citrus fruits in interstate commerce, namely, less than 25¢ an hour for the citrus season of 1938-1939

and less than 30¢ an hour for the citrus season of 1939-1940. The defendant denies that it failed and refused to pay its said employees wages at a rate less than that fixed by Section 6 of the Fair Labor Standards Act.

8. The defendant denies that during the said citrus seasons it employed the plaintiffs and the persons described in Exhibit No. 1 to the complaint, in the processing of citrus fruits for interstate commerce for workweeks of longer than 44 hours in the citrus season of 1938-1939 and longer than 42 hours in the season of 1939-1940, and the defendant denies that with respect to the number of hours the defendant employed the plaintiffs and the persons described in Exhibit No. 1 of the complaint, and in the payment of wages for such hours of work in each workweek, it violated the provisions of section 7 of the Fair Labor Standards Act.

9. The defendant denies that during said periods, namely, the citrus seasons of 1938-1939 and 1939-1940, the defendant has sold, shipped, delivered, transported, and offered for transportation in interstate commerce from its canning plant at Davenport, Florida, to into and through States, other than the State of Florida; goods processed in said canning plant in the processing of which the plaintiffs or any of them were employed is violation of Sections 6 and 7 of the Fair Labor Standards Act.

10. The defendant denies that during said periods, namely, the citrus fruit season of 1938-1939 and 1939-1940, the defendant has shipped, delivered, and sold with knowledge that shipment, delivery and sale thereof in interstate commerce from points within the State of Florida to, into and through, other states was intended, citrus fruits processed in said canning plant at Davenport, Florida, in the processing of which the plaintiffs or any

of them were employed, in violation of Section 6 and 7 of the Fair Labor Standards Act.

15. The defendant denies that the names, addresses, hours worked by each, rates at which each of them were employed, wages earned by them for said over-time, as well as for regular time, amounts and purposes for which weekly deductions were made from earnings and net amounts weekly to all of the employees of said defendant represented by the plaintiffs are matters of which the plaintiffs have complete and accurate records, and the defendant denies that the plaintiffs, as a part of the relief sought in this case, have any right to access to the records of the defendant.

16. The defendant denies that the plaintiffs have any right to demand or obtain judgment against the defendant for and on behalf of the plaintiffs and the persons listed in Exhibit No. 1 of the complaint, for under-pay, overtime, liquidated damages, attorneys' fees, and Court costs, or for any sums of money whatsoever, under the terms and provisions of said Fair Labor Standards Act or any other statute.

Third Defense.

The Fair Labor Standards Act, under which this suit is brought, among other things provides for maximum hours of work to be performed subject to the Act without the payment of overtime, the same being set forth in Section 7 of said Act. In said Section 7, it is likewise provided:

"(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

"(3) For a period or periods of not more than fourteen workweeks in the aggregate calendar year in an industry found by the Administrator to be of a seasonal nature, and if such employee receives compensation for employment in excess of 12 hours in any work day or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed."

That the administrator of the Wage and Hour Division did make a finding that "the first processing and canning of perishable or seasonal fresh fruits and vegetables is a branch of an industry and of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act and Part 526, as amended, of the regulations issued thereunder." Said interpretation or ruling was published in the Federal Register of August 24, 1940.

This defendant avers that, during the two seasons alleged in the complaint, it was engaged in the canning or first processing of perishable or seasonal fresh fruits and that the operations of this defendant were at all times during said seasons in accordance with the requirements of the Administrator of the Wage and Hour Division as to a seasonal industry; that the canning of citrus fruit by this defendant, during the seasons referred to in the complaint, was the canning of perishable and seasonal fresh fruits, that it was a branch of an industry and of a seasonal nature within the meaning of Section 7 (b) (3), and that the defendant is entitled to apply the seasonal exemption provided for by said Section as to each of the employees individually since said Act went into effect on October 24, 1938.

This defendant further avers that there have been no changes in the seasonality of the industry, in the mode

of operations, or any other changes that would make the situation different during the seasons referred to in the complaint than they were on August 24, 1940, at the time of the determination by the Administrator.

Fourth Defense.

This defendant avers that the Fair Labor Standards Act likewise provides for an exemption from the maximum hours provision of said Act during a period or periods of not more than 14 weeks in the aggregate of any calendar year to an employer engaged "in the first processing of, or in canning or packing perishable or seasonal fresh fruits and vegetables", all of which will appear from Section 7-c of said Act, and this Defendant avers that it was engaged in the first processing of, or in canning perishable and seasonal fresh fruits and vegetables during each work week of the seasons referred to in the complaint, and that it is entitled to apply said fourteen unlimited weeks to the services of the respective employees since the Act went into force and effect, to-wit: October 24, 1938.

The defendant was engaged in such business and operated its canning plant approximately seven work weeks during the calendar year 1938, after the effective date of the Fair Labor Standards Act. During the calendar year 1939 defendant operated its said plant approximately twenty-one work weeks from January 1, 1939 to May, 26, 1939, and approximately six work weeks from November 16, 1939 to December 31, 1939; and during the year 1940, for the period of time covered by the complaint, approximately thirteen work weeks, a total of forty-seven work weeks up to March 30, 1940.

The defendant claims exemption from the maximum hours provisions of the Act (Section 7-c) on behalf of it-

self and its employees, collectively and/or individually, during the seven work weeks that it operated its plant during the seasons of 1938, for the first fourteen weeks of the calendar year 1939, and for the entire nine work weeks of the operation of said plant during the year 1940 covered by the complaint.

Fifth Defense.

1. Each of the plaintiffs, when employed at the times set forth in the complaint, was employed within the area of production, engaged in handling, preparing in their raw or natural state or canning of agricultural or horicultural commodities for market, to-wit: citrus fruits, at the plant of the defendant at Davenport, Polk County, Florida.

2. Davenport is a town of less than 2,500, in fact being a town of 650 population, according to the 15th U. S. Cerisus, 1930, and is a typical rural community, containing within its corporate limits many citrus groves from some of which the defendant draws some of its supplies of citrus fruit, said plant being practically adjacent to some of said groves.

3. During the period mentioned in the complaint, approximately 48 million boxes of citrus fruit were produced annually in Florida's 39 citrus producing counties, for shipment in commerce or approximately 50% of all the citrus produced in the United States, of which total 36.3% was produced in Polk county where defendant's plant is located, being approximately three times as much as is produced in any other county in Florida, the next largest production being in Orange County, approximately 25 miles to the north of defendant's plant, which is located at or near the exact geographical center of the production of citrus in the largest citrus producing state in the United States, nearly all of said citrus producing counties

being contiguous, and forming a well recognized area of citrus production as it has uniformly and customarily been recognized for many years, and as it has been defined by statute and by regulation in the administration of many state and federal laws prior to the adoption of the Fair Labor Standards Act of 1938; all of which have been heretofore undertaken to be administered uniformly throughout said area, where the production, handling and canning of citrus fruits have simultaneously developed under uniform conditions of competition and regulation as to labor conditions as well as otherwise, and where no logical lines of classification can be drawn bearing a reasonable relationship to the objections of the Act. The result of this integrated development of citrus is that the usual range of farm travel is great, many producers owning grove properties more than 100 miles distant, but belonging to a cooperative or customarily dealing with a single independent handler in proximity to one of such grove properties, and producers and handlers alike are competitors and neighbors, meeting in common markets and under common conditions to bid against one another for a single labor supply or a single price or to exchange solutions of their common problems though their groves or their establishments may be more than 100 miles apart.

4. The defendant was, during the times covered by the complaint, engaged in the canning of agricultural commodities for market, to-wit: citrus fruits. The canning season in Florida usually runs from approximately November 1st to June 1st and during the seasons referred to in the complaint, this defendant was engaged in canning citrus fruits during the following periods:

November 14, 1938 to May 26, 1939.

November 16, 1939 to March 30, 1940.

5. The defendant is a cooperative organized and existing under the laws of the State of Florida and the ownership

of the stock of the defendant corporation is restricted to the owners of bearing groves located within Township 26 and 27 South, Range 18 East who patronize the Company. The defendant operates its canning plant at Davenport, Florida primarily for the benefit of the members of the Association and the defendant has under its care and control something over 2,000 acres of grove.

6. Section 13 (a) (10) of said Act provides as follows:

"13. The provisions of section 6 (wages provisions) and 7 hours provisions) shall not apply with respect to ..... (10) to any individual employed within the area of production (as defined by the Administrator) engaged in handling, packing .... preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market ...."

(1) The Administrator promulgated on October 20, 1938, Section 536.2 of the Regulations, purporting to define "area of production" as follows:

"Section 536.2 'Area of Production' as used in Section 13 (a) (10) of the Fair Labor Standards Act, An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products,

(a) If he is engaged in such work on a farm and on agricultural or horticultural commodities produced exclusively on such farm, or

(b) If the agricultural or horticultural commodities are obtained by the establishment where he is employed from

farms in the immediate locality and the number of employees in such establishment does not exceed seven.

(2) That regulation remained in effect through April 19, 1939, when following a series of Administrative hearings, he promulgated, effective April 20, 1939, ad additional paragraph to said Regulation 536.2, as follows:

"(e) With respect to perishable or seasonal fresh fruits and vegetables, if he is engaged in handling, packing, storing, drying, preparing in their raw or natural state, or canning such products for maket in an establishment which is located in the open country or in a rural community and which obtains all of its products from farms in its immediate locality. As used in this subsection (e) 'open country' or 'rural community' shall not include any city or town of 2,500 or greater population according to the 15th United States Census, 1930, and 'immediate locality' shall not include any distance of more than 10 miles."

Each of the plaintiffs, when so employed from October 20, 1938, through June 16, 1939, was employed in handling, preparing in their raw or natural state, or canning citrus fruits at the defendant's said establishment where such citrus fruits were obtained by said establishment from farms in the immediate locality.

(3) On June 15, 1939, effective June 17, 1939, the Administrator again amended said Regulation, as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(a) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven, or

* * * * * * * * *

(d) if he performs those operations on materials all of which come from farms in the immediate locality of the establishment where he is employed and the establishment is located in the open country or in a rural community. As used in this subsection (d), 'immediate locality' shall not include any distance of more than ten miles and 'open country' or 'rural community' shall not include any city or town of 2500 or greater population according to the 15th United States Census, 1940."

Each of the plaintiffs, when so employed from June 17, 1939 through September 30, 1940 was employed in handling, preparing in their raw or natural state of canning citrus fruits all of which came from farms in the general vicinity of the defendant's said establishment where he was so employed.

(4) On July 23, 1940, effective October 1, 1940, the Administrator again amended said Regulation as follows:

"II. An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, drying, preparing in their raw or natural state, or canning of perishable or seasonal fresh fruits or vegetables for market:

If he performs those operations on materials all of which come from farms in the general vicinity of the establish-

ment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten."

(5) On March 12, 1941, effective April 1, 1941, the Administrator again amended said Regulation as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning or agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(a) If he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten, or

(b) With respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this subsection (b), 'first concentration point' means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled or from other first concentration points, or

(c) With respect to Puerto Rican leaf tobacco, if he is engaged in handling, packing, storing, and drying such tobacco for market in an establishment which is a first concentration point for such tobacco. As used in this sub-

section (c), 'first concentration point' means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing."

(6) On October 6, 1941, effective January 5, 1942, the Administrator again amended said Regulation, as it is now currently in effect, as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(a) If he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employes engaged in those operations in that establishment does not exceed ten, or

(b) With respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this subsection (b), 'first concentration point', means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled from other first concentration, or

(c) With respect to Puerto Rican leaf tobacco, if he is engaged in piling, bulking, or otherwise handling un-

stripped tobacco for market in an establishment which is a first concentration point for such tobacco; provided that employees engaged in stripping tobacco or engaged in piling, bulking, or otherwise handling stripped tobacco shall not be deemed to fall within this definition. As used in this subsection (c), 'first concentration point' means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing."

Each of the plaintiffs, when so employed at all times from the effective date of the Act through the period covered by this suit was employed in handling, preparing in their raw or natural state, or canning citrus fruits all of which came from farms in the general vicinity of the defendant's said establishment where he was so employed.

7. The Administrator has consequently failed to define the term of "area of production" as each of said regulations taken in its entirety is void and of no effect for the following reasons:

(a) None of said regulations are predicated upon the proper geographical considerations contemplated by Congress as indicated by the word "area" in the term sought to be defined.

(b) By none of said regulations is the determination of whether an individual is employed within an "area of production" dependent upon the place where he is employed in relationship to the earth's surface.

(c) By none of said regulations is congressional intent given effect.

(d) Each of said regulations reflects an exercise of power by the administrator beyond the limits of the power delegated to him by Congress.

(e) Each of said regulations reflects an exercise of power by the administrator beyond the limits of any power which could be constitutionality delegated to him by Congress through the language contained in this statute.

(f) Each of said regulations is arbitrary, capricious, unreasonable and discriminatory and, therefore, void.

(g) Each of said regulations seeks to change or vary the usual, logical, reasonable and generally accepted meaning of the term "area of production".

(h) The regulations identified in paragraphs 6 (1), 6 (4), 6 (5), and 6 (6) of this defense, hereinafter called the first, second, third, and present size regulations, attempt to confer the exemption upon employees who have few co-employees and to deny the exemption to employees who have more co-employees without regard to the "area" in which either class may be employed.

(i) Each of said regulations have the effect of declaring that for practical purposes there is no area of production of Florida citrus fruit for the reason that not more than seven per cent of all the citrus fruit produced in Florida is handled under the conditions sought to be applied in any of said regulations, though all of said fruit is handled in Florida and in the general vicinity where produced.

(j) The regulations identified in paragraphs 6 (2) and 6 (3) of this defense, hereinafter called the haul-population regulations, attempt to confer the exemption upon

employees who happen to be employed with reference to fruit all of which was hauled from within a particular radius and to deny the exemption to those who happen to be employed with reference to a particular box which might have been hauled beyond that radius, regardless of where either may have been employed.

(k) Said haul-population regulations have no reasonable relationship to the objectives sought to be obtained, as neither the length of haul nor the population of the town in which the establishment may be located bears any rational nexus to the place where the individual is employed, the wages paid, the hours or conditions of work, the type of the establishment, or any other conceivable factor of reasonable classification.

(l) Said haul-population regulations have been recognized by the Administrator to have been invalid, since they were only temporarily in effect, and have now been repealed.

8. The defendant says that all of its produce are obtained from farms in its immediate locality; practically all of the agricultural commodity being obtained from farms within a radius of ten miles from the establishment and that portion obtained beyond ten miles is a very small percentage of the pack of this defendant; that there is produced within a radius of ten miles of the establishment approximately 1,000,000 boxes of citrus fruit each season, being much more citrus fruit than the total quantity annually obtained by the defendant for use in its establishment.

9. Defendant further says that its establishment is located and plaintiffs were consequently employed in the "area of production" of citrus fruit by any reasonable

definition of the term as used in the Fair Labor Standards Act, and that upon failure of the Administrator to properly definite or fix the limits of such "area of production" neither the rights of plaintiffs or defendant can be affected, the same having been fixed by legislative enactment.

10. Defendant further says that its employees to whom this complaint relates, performed all of their services during the times alleged in the complaint, in the "area of production" within the legislative intent.

Thereafter, by leave of Court defendant filed its additional defenses as follows:

First Additional Defense.

This defendant denies that during each and every of the work weeks during the periods of time alleged in the amended complaint this defendant was subject to the Fair Labor Standards Act of 1938.

Second Additional Defense.

This defendant alleges that Section 13 (a) (10) of said Act provides as follows:

"13. The provisions of sections 6 (wages provisions) and 7 (hours provisions) shall not apply with respect to —(10) To any individual employed within the area of production (as defined by the Administrator) engaged in handling, packing, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market—."

(1) The Administrator promulgated on October 20, 1938, Section 536.2 of the Regulations, purporting to define "area of production" as follows:

Section 536.2 'Area of Production' as used in Section 13 (a) (10) of the Fair Labor Standards Act, An individual shall be regarded as employed in the "area of production" within the meaning of Section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

(a) If he is engaged in such work on a farm and on agricultural or horticultural commodities produced exclusively on such farm, or

(b) If the agricultural or horticultural commodities are obtained by the establishment where he is employed from farms in the immediately locality and the number of employees in such establishment does not exceed seven.

The said regulation remained in effect through April 19, 1939; that the Circuit Court of Appeals in the case of Fleming vs. Farmers Peanut Company has held the limitation "the number of employees in such establishment does not exceed seven" is void and that during each of the work weeks in which the plaintiffs performed services, this defendant procured the agricultural or horticultural commodities, upon which the plaintiffs performed services, from farms in the immediate locality and, therefore, the defendant was not subject to the Act during each and every of said workweeks.

(2) Following a series of Administrative hearings, the Administrator promulgated, effective April 20, 1939, an additional paragraph to said Regulation 536.2, as follows:

"(c) With respect to perishable or seasonable fresh fruits and vegetables if he is engaged in handling, packing,

storing, drying, preparing in their raw or natural state, or canning such products for market in an establishment which is located in the open country or in a rural community and which obtains all of its products from farms in its immediate locality. As used in this subsection (e) "open country" or "rural community" shall not include any city or town of 2,500 or greater population according to the 15th United States Census, 1930, and "immediate locality" shall not include any distance of more than 10 miles."

The said regulation remained in effect through April 19, 1939; that the Circuit Court of Appeals in the case of *Fleming vs. Farmers Peanut Company* has held the limitation "the number of employees in such establishment does not exceed seven" is void and that during each of the workweeks in which the plaintiffs performed services, this defendant procured the agricultural or horticultural commodities, upon which the plaintiffs performed services, from farms in the immediately locality, and, therefore, the defendant's establishment was in the open country or rural community and was not subject to the Act during each and every of said workweeks.

(3) On June 15, 1939, effective June 17, 1939, the Administrator again amended said Regulation as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(a) If he performs those operations on materials all of which come from farms in the general vicinity of the

establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven, or

* * * * * * * * *

(d) If he performs those operations on materials all of which come from farms in the immediate locality of the establishment where he is employed and the establishment is located in the open country or in a rural community. As used in this subsection (d), 'immediate locality' shall not include any distance of more than ten miles and 'open country' or 'rural community' shall not include any city or town of 2500 or greater population according to the 15th United States Census, 1940."

That during each and every of the workweeks from June 17, 1939 through September 30, 1940, this defendant was within the "area of production" as so defined; that the Circuit Court of Appeals, Fifth Circuit, in the case of *Fleming vs. Farmers Peanut Company,* 127 Fed. (2d) 404 has stricken "the number of employees engaged in those operations in that establishment does not exceed seven"; that the services performed by the plaintiffs and each of them were operations on materials all of which came from farms in the general vicinity of the establishment of this defendant, and this defendant, therefore, claims to be within the exception during each and every of said workweeks. This defendant further avers that the services performed by each and every of the plaintiffs during each and every of the workweeks was on materials which came from farms in the immediate locality of this defendant's establishment, and that the establishment was during each and every of said workweeks located in the open country or rural community, as defined by the Administrator.

This defendant further alleges that during each and every of the workweeks covered by the period of times set forth in the amended complaint, the plaintiffs and each of them were employed in handling, preparing in their raw or natural state, or canned citrus fruits.

The motion filed by the plaintiffs to the Fifth Defense was, by agreement, treated as addressed to the additional defenses and, thereafter granted in the pretrial conference order.

On April 27, 1942, plaintiffs filed their motion to strike addressed to the defenses, the material parts of said motion being as follows:

III.

The plaintiffs move the Court, to strike those portions of the answer entitled "Third Defense" and "Fourth Defense", severally, in their several entireties, upon the following grounds:

A. The matter objected to is redundant, immaterial, impertinent and scandalous, and constitutes no defense to the amended complaint as so amended.

B. The matter objected to is not responsive or relevant to the issues involved in this action, and could not be put in issue or be given in evidence between the parties in answer to the amended complaint as so amended.

C. The said Third and Fourth Defenses, severally, merely set up a legal argument and do not present any issuable defense.

D. Said fourteen work weeks exemption claimed in said defenses has to be claimed and designated by the em-

ployer at the time that the work is done, and cannot be claimed *post litem motam*.

E. It is not set up in the said Third and Fourth Defenses that the defendant ever, prior to this action designated which 14 weeks, or any part of same, in either of said seasons of 1938-39 or 1939-40, it claimed to be exempted. By virtue of the failure of said defendant to designate, prior to the institution of this suit, any week or weeks as part of all of the said fourteen week exemption, said defendant waived said exemption.

F. No facts or circumstances are set up in said Third and Fourth Defenses, or either of them, showing that the defendant is entitled to claim the exemption of 7 (b) 3 of the Fair Labor Standards Act of 1938.

G. In order to entitle itself to said seasonal exemption of 14 weeks, defendant should have claimed said 14 weeks during the said several seasons, and regulated its pay of the employees aforesaid in accordance with such claims so then made. Having made no such claim and having failed to regulate the pay of the employees now suing for any week during either of said two seasons, differing from any other week in either of said two seasons, the defendant is now estopped to claim an exemption not heretofore claimed particularly as the benefits therefor cannot now be equitably applied.

H. The clause of said Fair Labor Standards Act of 1938 referred to, namely, 7 (b) 3, is unreasonable and discriminatory, and does not afford to laborers in seasonal industries the equal protection of the law, as required by the Fourteenth Amendment to the Federal Constitution.

I. The said claimed exemption is unreasonable and unconstitutional for the reason that it discriminates against

the employee, and in favor of the employer, in a particular industry which happens to be designated by the Administrator as seasonal, and, therefore, said provisions for exemption does not afford to the employees equal protection with their employers under the said law. Such exemption is merely an arbitrary discrimination in favor of the employer, without any basis in reason.

There was likewise a motion to strike the Fifth Defense, but after hearing, the Court entered an order, among other things, providing:

7. Since the filing of the answer in this cause, the Circuit Court of Appeals has rendered a decision in the case of Fleming vs. Farmers Peanut Company with reference to a definition or definitions of the Adminstrator of "area of production" and the Court is further of the opinion that the Fifth Defense should be redrawn in view of said decision and the motion to strike the Fifth Defense is therefore granted.

8. It appearing to the Court that the claims of the plaintiffs, if any, depend upon whether the services of the plaintiffs were performed within the "area of production" and that this case may be expedited by a determination of this issue before passing upon the defenses set forth in the Third and Fourth Defenses of the Answer, the Court reserves ruling upon motions to strike the third and fourth defenses of the Answer.

The said Fifth defense was then amended and the original fifth defense is omitted from this record—the amended fifth defense shown.

The motion of plaintiffs to strike the Fifth Defense as amended is as follows:

II,

The entire Fifth Defense as set up in said amendment to said answer and the different portions thereof severally as hereinafter set out, upon the following grounds:

A. The exemption purported to be allowed by Section 13 (a) (10) is unconstitutional in that it is of a classificatory nature, and arbitrarily discriminates between persons and classes, both of employers and employees, not to be properly discriminated between or classified in that manner.

B. The total exemption as allowed by Section 13 (a) (10) of the Fair Labor Standards Act of 1938 is unconstitutional for the reason that there exists no reasonable basis for allowing the exemption to a certain class of employers and against a certain class of employees within the definitions and limitations therein set forth.

C. Said Fifth Defense does not aver that no town of 2500 population according to the applicable Federal census is located within ten miles of the plant of the defendant company.

D. Paragraph 3 of said Fifth Defense is mere argument, and should be separately stricken.

E. Paragraph 5 of said Fifth Defense is wholly irrelavant. It has no bearing upon the issues in this cause. Moreover, it is insufficient and misleading, because it does not deny what is the fact, namely, that the defendant's canning plant cans fruit belonging to many growers and producers who are not members. Moreover, the ownership of stock in the defendant company is of no legal consequence in determining whether the friut that is

canned at the defendant's canning plant comes from the "area of production".

III.

That portion of paragraph VI, consisting of subsections 4, 5 and 6 upon the following grounds:

A. Said sub-section undertake to state respectively the definitions of "Area of production" as promulgated on July 23, 1940, March 12, 1941 and October 6, 1941. All of said definitions were promulgated after the cause of action in favor of the plaintiffs had accrued and matured.

IV.

That portion of said Fifth Defense consisting of paragraph 7 thereof, upon the following grounds:

A. None of the administrator's definitions of "area of production" as defined in this controversy are void for the reasons stated in said paragraph, or any of them, or for any other reason.

B. The Courts have no right to void the administrator's definitions of the phrase "area of production" as involved in this controversy.

C. Ih the administrator's several definitions of "area of production" are void, as set forth in said paragraph, then no exemption 13 (a) (10) exists in favor of the defendant.

D. The defendant's claim of exemption under said Section 13 (a) (10) is inconsistent with, contrary to and repugnant to the claim contained in this paragraph of said amendment to said answer that this definition is

void. Only if the definition is valid, is the defendant entitled to an exemption under 13 (a) (10), Fair Labor Standards Act of 1938.

E. The definitions of "area of production" given by the adiminstrator, and involved in this controversy are not arbitrary, but on the contrary, are reasonable as applied to the citrus industry, having in consideration the nature of the citrus industry, and the circumstances under which the canning operations are carried on in such a seasonal industry.

V.

All of paragraph 8 of the said Fifth Defense, on the following grounds:

A. Said paragraph 8 first claims that all of the agricultural commodity processed by the defendant was obtained from farms in this immediate locality. Thereafter said paragraph 8 contradictorily states that *practically* all of the agricultural commodity processed by the defendant was obtained from farms within ten miles of defendant's plant, and that that portion beyond ten miles *is a very small portion of the pack of the defendant.*

B. Those definitions by the administrator of the phrase "area of production" applicable to this controversy require as follows: The definition set out in paragraph 6 sub-section requires that the (meaning *all* the) agricultural or horticultural commodities be obtained from farms in the immediate vicinity and defines the phrase "immediate vicinity" as not to include any distance more than ten miles. The definition in paragraph 6, sub-section 3, requires that all of the materials come from farms in the general vicinity of the establishment, and be a rural com-

munity which shall not include any city or town of 2,500 or greater population, and that the number of employees engaged in the operations does not exceed seven, and defines the phrase "immediate vicinity" as not including any distance more than ten miles.

C. All of these definitions require not only that all of the products processed by the establishment claiming the exemption come from the *immediate locality*, and define the phrase "immediate locality" as not to exceed ten miles distance from plant, and require that the establishment be located in the open country, and require that the establishment not employ employees in excess of seven.

D. Paragraph 8 of the defendant's Fifth Defense does not aver, nor does any part of the Fifth Defense aver the number of employees was less than seven. In point of fact the number of employees employed by the defendant establishment at the times mentioned in the complaint exceed 200.

E. The averment that *practically* all of the agricultural commodities were obtained from farms within ten miles of the establishment is not a compliance with the requirement of the administrator's applicable definitions of "area of production" that all of the agricultural commodities of the establishment claiming the exemption be obtained from farms within ten miles.

F. The defendant in the Fifth Defense of its *original* answer stated that as much as 10% of the commodities processed within the defendant's establishment came from farms beyond the radius of ten miles of its establishment. This averment in the original answer estops the defendant from claiming now that any less per cent of the said commodities came from farms beyond the radius of ten miles of its establishment.

VI.

That portion of said Fifth Defense consisting of the ninth paragraph thereof, on the following grounds:

A. The defendant here seems to rely upon the proposition that the plaintiffs were employed within the "area of production" *by any reasonable definition of the term* as used in the Fair Labor Standards Act of 1938. The Fair Labor Standards Act does not define the "area of production"—either reasonably or unreasonably. It it not important whether or not the phrase "area of production" was *reasonably* defined by the administrator. If the phrase has been defined by the administrator, and it has, then the definition of the administrator must stand. The Courts cannot make a definition for the administrator, nor can the defendant.

B. The averment that the failure of the administrator properly to define or fix the limits of the "area of production" would not affect the rights of the plaintiffs or defendant is entirely irrelevant, because of the said Fifth Defense avers that the adminstrator has defined the phrase "area of production". Hence the administrator has not failed to define said phrase. The definitions of the administrator applicable to the periods of the employment of the plaintiffs, as set forth in our complaint, are the only definitions with which the Court is concerned at this time.

VII.

Plaintiffs further move the Court to strike that portion of the said Fifth Defense of the answer, as amended, comprising paragraph 10 thereof, on the ground that the same is nothing but a conclusion of law, and entirely argumentative, particularly in the use of the phrase "within the legislative intent".

VIII.

Plaintiffs move the Court to strike the entire Fifth Defense of the defendant's amendment to the answer, upon the following grounds:

A. Said defense purports to set up a total exemption under Section 13 (a) (10) of the Fair Labor Standards Act of 1938, based upon the proposition that the plaintiffs were employed, and that the commodities processed were procured within the "area of production". Thereupon said Fifth Defense avers that there has been no valid definition of the phrase "area of production" by the administrator: Thus the averments of said Fifth Defense seek to eliminate the very total exemption claimed, because said total exemption can only be claimed if the administrator has defined the "area of production" and has thereby given life to the exemption.

If, as claimed by the defendant, there is no valid definition of the phrase "area of production", then there is no exemption available to the defendant under Section 13 (a) (10).

B. In said Fifth Defense, the defendant has not pleaded a set of facts entitling the defendant to a total exemption under Section 13 (a) (10) on the basis of the three separate definitions of "area of production" made by the administrator, quoted by the defendant, and applicable to the controversy herein sued upon.

C. The claim of the plaintiffs is for under-pay and overtime in certain periods of time. Those three several definitions of the administrator covering the particular periods of time to which the claims of the plaintiffs apply, are applicable to the present controversy and not any

present definition. The plaintiffs are seeking damages for past violations of the Fair Labor Standards Act of 1938, and are not seeking injunction against any future violations of the Act as in the case of:

Citation:

Walling, Administrator vs. Farmers Peanut Co. (CCA 5th)—Fed. 2d—

D. In and by said Fifth Defense in the said amendment to its answer the defendant has failed to show that it is entitled to the total exemption set forth in Section 13 (a) (10) of the Fair Labor Standards Act of 1938 because, after setting up the different definitions of "area of production" promulgated by the administrator, it fails to show that the facts exist which entitle the defendant to invoke the exemption. On the contrary, the defendant in and by its said Fifth Defense shows that the commodities were not processed by the defendant at an establish which derived all of its commodities from the "area of production" as so defined.

E. The defendant has not pleaded facts showing itself entitled to the exemption it seeks to claim. For example, administrator's definitions of the pharse "area of production" require, that an establishment to be entitled to the exemption, must have been located in the open country, with no town of 2,500 population within a radius of ten miles. The Fifth Defense does not allege that the establishment of defendant is located in the open country with no town of 2,500 population within a radius of ten miles. The mere allegation that the town of Davenport is within the radius of ten miles, and does not have 2,500 population is not equivalent to an ayerment that there are no other towns within the 10 mile radius that have

a population of more than 2,500. In fact there is a town, namely Haines City within said 10 mile radius which has and has had by the applicable Federal Censuses of 1930 and 1940 a population of more than 2,500.

Again, for example, the administrator's definitions of the phrase "area of production" pleaded and applicable to this controversy allow the exemption only if not more than seven employees shall be employed at the establishment claiming the exemption. There is no averment in the Fifth Defense that not more than seven employees were employed by the defendant at its establishment during the period in controversy. On the contrary, over 200 persons were employed by defendant during said periods, subject to said Fair Labor Standards Act of 1938.

Again, for example, the administrator's definitions of the phrase "area of production" quoted by the defendant and applicable to this controversy state that *all* of the commodities processed at the defendant's establishment must come from the immediate vicinity or locality of the establishment, and defines the phrase "immediate vicinity or locality" as within a radius of ten miles. Yet the defendant has not pleaded that *all* the commodities processed at its establishment came from within a radius of 10 miles of the establishment. On the contrary, the defendant has pleaded that *a portion* of the commodities so processed did not come from within a radius of ten miles. In a previous answer filed by defendant in this cause, defendant showed that the portion of commodities processed at defendant's establishment and derived from farms outside of a radius of ten miles of the establishment, comprised approximately 10% of its total pack.

On October 2, 1942, the Court entered his Order which was filed on the same date denying Motion to Strike

Portions of Defendant's Amendment to Answer in words and figures as follows:

This cause came on for hearing on September 21, 1942 at Orlando, Florida, on plaintiffs' motion to strike certain portions of defendant's amendment to the answer, at which time and place the parties were present by their attorneys, and the Court heard arguments. The portion of the answer sought to be stricken is an affirmative defense by the defendant alleging that Sections 6 and 7 of the Fair Labor Standards Act did not apply to the plaintiffs during the two seasons stated in the complaint for the reason that the plaintiffs were employed within the "area of production" engaged in the operations set forth in Section 13 (a) (10) of the Act The defendant claims that the plaintiffs were within the "area of production" as defined by the Administrator during the different periods to which the different regulations applied, that the plaintiffs during the entire period covered by the suit were engaged in those operations in the general vicinity of defendant's establishment, that if the Court contrues "immediate locality" as used by the Administrator in his definition of "area of production" promulgated on October 20, 1938 to mean a distance of ten miles or less, that the plaintiffs were performing their operations on products obtained from farms in the "immediate locality" of the establishment because practically all of the commodity was obtained from farms within a radius of ten miles; the portion obtained beyond the ten miles being a very small percentage of the pack; that for the same reason the plaintiffs were within the definition of "area of production" as the same was amended by the Administrator on or about April 19, 1939, that for the entire second season referred to in the complaint, the plaintiffs were within the "area of production" as defined by the Administrator on or about June 15, 1939 because the fruit in-

volved came from farms in the "general vicinity" of the establishment, that plaintiffs were within the "area of production" by any reasonable definition of the term, and within the "area of production" within the legislative intent. By paragraph 7 of the Fifth Defense in the Answer, the defendant contends that the definitions of "area of production" by the Administrator are and each of them is void. The Court considers this paragraph as a defense in law and cannot be determined without taking testimony as to the facts to which the law is to be applied.

The Circuit Court of Appeals of the Fifth Circuit in the case of *Fleming vs. Farmers Peanut Company,* 128 Fed. (2d) 404 has held the limitation in the definition of "area of production" by the Administrator as to the number of workers in commerce who work in one establishment is a void limitation. Therefore, this Court holds that any such limitation in any of the definitions involved in this cause is surplusage and does consider the definitions with such limitation deleted.

The Court is of the opinion that its duty is to first determine whether or not the plaintiffs were within the "area of production" as defined by the Adminstrator before passing upon the validity of said definitions or any of them and in order to make such determination it is necessary that testimony be taken on this issue, it is thereupon Considered, Ordered and Decreed:

1. That the plaintiffs' motion to strike portions of defendant's amendment to the answer be and it is hereby denied in its entirety; that by this ruling the Court does not pass upon the validity of the definitions or any of them.

2. That this cause be and it is hereby set down for the taking of testimony before the Court on the 22nd day

of October, 1942 at ten o'clock in the forenoon, at Orlando Florida, at which time the Court will take testimony on the issues of fact raised by the amended Fifth Defense of the Answer and does reserve any ruling on the validity of any of the definitions for further order of this Court.

Done and Ordered at Tampa, Florida, this 2nd day of October, A. D. 1942.

WILLIAM J. BARKER,
District Judge.

---

43 TRANSCRIPT OF TESTIMONY.

In the District Court of the United States, Southern District of Florida, Tampa Division.

Wilma E. Addison, Ernestine C. Lyles, Edgar Campbell, Sallie Baker and Luther Black, Plaintiffs,
vs. No. 441-T-C.
Holly Hill Fruit Products, Inc., a Florida corporation, Defendant.

Be It Remembered, that commencing on the 2nd day of December, 1942, at 10 o'clock in the forenoon, in the United States District Court Room, Federal Court House, Orlando, Florida, the above entitled cause was heard by the Honorable William J. Barker, Judge of the above styled Court; that on the trial of said cause, the plaintiffs and defendant, to maintain the issues joined on their respective parts, introduced and offered before the said Court the following oral and documentary evidence, and interposed the objection and took the exceptions herewith noted:

Appearances:

George P. Garrett, Esquire, Ellis F. Davis, Esquire, counsell for plaintiffs.

and

Charles O. Andrews. Jr., Esquire, W. H. Poe, Esquire, R. B. Huffaker, Esquire, G. L. Reeves, Esquire, Counts Johnson, Esquire, counsel for defendant.

(Pages 40 to 91 reported by Mrs. E. S. Wilson.)

The Court:

Proceed.

44 JOHN SNIVELY, JR., called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live, Mr. Snively?

A. Winter Haven.

Q. You are a fruit grower?

A. That's right.

Q. According to the records of the Holly Hill Fruit Products, Inc., Davenport, 571 boxes of King oranges were purchased from you and paid for on January 13th, 1940.

A. I think that is right.

Q. You recall this sale?

A. Yes.

Q. That came from your grove?

A. Yes, sir.

Q. Where is that grove located?

A. It is located just north of Haines City, on the west side of the railroad, about three and a half miles fron Holly Hill Packing House.

Q. Did that fruit come from what is called Power Lake Grove?

A. Yes, sir.

Mr. Huffaker:
That's all.

Cross Examination.

By Mr. Garrett:

Q. That's all the fruit you sold to Holly Hill Fruit Products in the seasons of 1938-1940, or 1939-40?

A. That's right.

Mr. Garrett:
That's all.

(Witness excused.)

45 ALFRED M. TILDEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Mr. Tilden, you live at Winter Haven?

A. Yes, sir.

Q. You are a grove owner?

A. Yes, sir.

Q. It appears from the records of Holy Hill Fruit Products, Inc., that there was purchased from you, through the Grapefruit Distributors, 346 boxes of oranges on January 20th, 1939. Do you remember where that fruit came from?

A. It came from the grove called the Tower Lakes Grove north of Haines City.

Q. About how far from Haines City?
A. About a mile and a half north.
Q. I mean from Davenport.
A. I suppose from the grove to Davenport might be three and a half miles at the outside.

Mr. Huffaker:
That's all.

Cross Examination.

By Mr. Garrett:
Q. Is that all of the fruit you sold, turned over, to the Holy Hill Fruit Products, Inc., during the seasons of 1938-'39, or 1939-40?
A. I think so; just King tangerines we have there. Sold for the juice factor.
Q. How far do you place that grove from Davenport?
A. I would think it was about three and a half miles from the center of the grove to Davenport.

Mr. Garrett:
That's all.

(Witness excused.)

47 B. C. COOK, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:
Q. Mr. Cook, what is your business?
A. Operating in fruit; buying and selling.

Q. Buying and selling fruit and operating trucks?
A. Yes, to canneries.
Q. Mainly selling to canneries?
A. The largest part of it.
Q. Have you been in that business since 1938?
A. Yes, sir.
Q. Located where?
A. Haines City.
Q. It appears from the records of the Holly Hill Fruit Products, Inc., that there was purchased from you, through the Grapefruit Distributors, the following quantities of fruit. Please, note the dates.
11/17/38—2,356 boxes.
11/22/38—2,868 boxes.

Mr. Garrett:
Q. Repeat, please.

Mr. Huffaker:
12/1/38—1,990 boxes.
1/12/39—935 boxes.
4/27/39—5,429 boxes.
5/4/39—1,572 boxes.
6/2/39—125 boxes.
3/30/39—3,532 boxes.

Mr. Huffaker:
Q. Do you remember selling that fruit to the Grapefruit Distributors and delivering it at the canneries of Holy Hill Fruit Products, Inc.?
A. I remember selling him some fruit. I don't remember on what date.
Q. But during that period of time you were selling fruit?
A. Yes, sir.

Q. Well, if their records show that they bought that, that is correct?

A. Yes, sir.

Q. You didn't keep an individual record of the fruit?

A. No, sir.

Q. Where did you buy this fruit mainly?

A. To the best of my knowledge, I buy the most of my fruit from around Haines City, Loughman, Lake Hamilton, Dundee and Davenport.

Q. Did this fruit I have listed come from that territory?

A. Well, I wouldn't be positive, but it should come from around there because the haul is—I try to buy at least 80 to 90 per cent. of my season movement of fruit in and near home.

Q. According to your best recollection, what percentage of this fruit did you buy in this territory you just described?

A. I would say 85 or 90 per cent.

Q. Where did the balance come from?

A. I remember—the only fruit I remember hauling from away from those places, I believe it was after the freeze of 1940; I think we had a freeze; he told me to get him some fruit to put up as citrus salad. I don't remember what month, it must have been around March, and I got it from the Babson Park section. I don't remember how many boxes; a small amount. I believe it was Tom Brown's grove.

Q. In Polk County?

A. Yes, sir.

Q. You spoke of the freeze, did that increase the business of the canneries?

A. I hauled a lot of fruit from around home for juice purposes.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. You did have records, Mr. Cook, didn't you?

A. No, sir, I didn't never keep a complete record. I always kept the tickets. We operate on a cash basis, and those tickets got destroyed. I took a vacation and put them in a large suitcase, and while I was off my mother needed the suitcase, and didn't know I had the tickets in there, and she had the maid take them out, and I think they may have burned them.

Q. When was that?

A. It must have been around '37, '38, or '39; I am not positive, because I didn't keep any record.

Q. It was in one of those years that the suitcase burned?

A. It must have been.

Q. What about the records since then?

A. Well, I never—I don't keep a complete record; I don't keep where the fruit comes from.

Q. You don't have any record of who you bought from?

A. No, sir, I don't. Only I bought from a lot of growers around Haines City.

Q. You don't know how much you paid, or who you paid it to?

A. No, sir.

Q. You don't make any Income Tax Report?

A. Not until this season. I am keeping a record this season.

Mr. Garrett:

That's all.

Re-Direct Examination.

By Mr. Huffaker:

Q. Mr. Cook, in the season of '38-'39, did you have

any instructions about where you were to get the fruit from Mr. Di Christini?

A. He asked me—I am not positive, but I think he told me to stay in a ten mile area of the cannery.

Q. Did you do that?

A. When was that?

Q. '38 and '39?

A. I believe that I did. I won't be positive. Because I bought a lot of fruit from Strong, Olson, and all those growers.

Q. I want to ask about another season. It likewise appears from the records of the defendant that the following grapefruit was purchased from you through Grapefruit Distributors:

11/21/29—4,883 boxes.
12/16/39—4,418 boxes.
12/29/39—324 boxes.
11/19/40—1,529 boxes.
2/7/40—1,867 boxes.
2/15/40—1,811 boxes.
2/24/40—5,445 boxes.
3/1/40—3,902 boxes.
3/9/40—3,760 boxes.
3/23/40—2,132 boxes.
3/23/40—786 boxes.
3/30/40—1,894 boxes.
4/13/40—2,053 boxes.
4/29/40—5,160 boxes.

Total—40,434 boxes, which added to the boxes I inquired about with reference to the '38-'39 season, makes a total of—there was 18,807. You have testified fully in regard to that number of boxes. Is your testimony the same with reference to this last list of fruit?

A. Please ask that question over.

Q. The same testimony applies to this last fruit?

A. Yes, sir.

Q. Why did your business increase so in 1940?

A. Because I had a few more trucks. In the '40 season?

Q. Yes, the spring of '40?

A. I bought some more trucks.

Q. Did the freeze have any effect?

A. Well, a lot around home, because everybody was anxious to get their fruit off.

Q. Wasn't that practically the only way they could salvage anything out of the fruit? Sell it to the canneries?

A. Yes, sir, lots of them.

Q. A while ago you mentioned that from 85 to 90 per cent. of your fruit sold came from the Haines City, Loughman, Lake Hamilton, Dundee and Davenport territory. That applies mainly to the '39-'40 sales?

A. I can't be positive, but mainly what amount is it applies—I try to do that every year. For the last five or six years I tried—I couldn't be positive. I say that is the best of my knowledge.

Q. The Court wants to know the exact status. There seems to be a little conflict in your testimony. You testified Mr. Di Christini told you to confine operations within a ten mile radius, and you said as far as you know you did comply with that request. Is that true?

A. I would say, to the best of my knowledge, not having any records, I did.

Q. Then, the 85 to 90 per cent. that you purchased in the second season came from that territory, and, possibly, some 10 to 15 per cent. came from Babson Park?

A. I would think so; yes, sir.

Mr. Huffaker:

That's all.

Re-Cross Examination.

By Mr. Garrett:

Q. You have no record?

A. No, sir.

Q. You made no income tax return?

A. Not at that time; I don't think so. No, sir. I am just keeping records this year.

Q. You operated a personal business? You didn't have a corporation?

A. No, sir.

Q. And you bought for cash?

A. Yes, sir.

Q. And where did you get the cash? From the Holly Hill Fruit Products, or was it your own?

A. My father does that. I am just a buyer and salesman for my father.

Q. Is it his business?

A. Yes, sir.

Q. Does he have records?

A. I don't know whether he has a record; I am pretty sure he doesn't have a record of the fruit because that came into the office and I just keep the tickets; I didn't keep records like a packing house.

Q. Did he?

A. No, sir.

Q. What is your father's name?

A. B. C. Cook.

Q. You don't know where this 2,356 boxes on November 17th, 1938, came from?

A. No, sir, I couldn't say.

Q. You don't know anything about any of the fruit?

A. Not positive.

Q. Some of them came from Dundee?

A. Dundee, Florida?

Q. Yes

A. I would think so, yes, sir.

Q. What do you base that on? That you bought some fruit—

A. (Interrupting.) Bought a lot of it around Haines City, Loughman, Lake Hamilton, Dundee, and Davenport.

Q. How far is Dundee from Haines City?

A. I don't know; about 8 or 10 miles, I think.

Q. How far is Haines City south of Davenport?

A. Four miles.

Q. When you are referring to where Dundee is, you are referring to where the local stores are in the community?

A. I would think so. Yes, sir.

Q. There are groves on all sides of Dundee?

A. Yes, sir.

Q. And you bought from groves all around Dundee?

A. From Lake Hamilton and between Lake Hamilton and Dundee.

Q. How far is Babson Park from Dundee?

A. I couldn't say positively, but it is 16 miles to Lake Wales, and I don't know how far it is from Lake Wales.

Q. From Haines City to Lake Wales is 16?

A. Yes, sir.

Q. And Babson is a few miles further?

A. Yes, sir.

Q. How much did you buy in 1940 from Babson Park?

A. The only fruit I remember buying from down in there was P. C. Morrell and Tom Brown. I might have bought from a few more groves in there, but I hauled fruit to different canneries.

Q. How much fruit did you buy from Babson Park to haul to Holly Hill Fruit Products?

A. I don't remember the amount of boxes, not having a record, but it was to put up a citrus salad. Don't know how many boxes they used, and I don't know whether they put every box in it.

Q. Don't know whether it was one thousand or ten thousand?

A. No, sir, I don't.

Q. You said 85 to 90 per cent. of the fruit came from within a 10 mile area. Was that true in '38 and '39?

A. I would think so, yes, sir.

Q. And in 1940 you got more from outside that area?

A. No, I didn't; the only fruit I would think I got from outside the area would be in 1940. I don't believe I got any outside the area in '38 and '39.

Q. When you talk about the area, you mean 10 miles from the packing house of Holly Hill Fruit Products?

A. Yes, sir.

Q. What do you mean? Air distance or road distance?

A. I would think maybe road or either air. I just tried to operate around Loughman, Haines City, Lake Hamilton, Dundee and Davenport.

Q. How far do you put Loughman from Davenport?

A. I really don't know the distance, not to the mile. I don't have a mileage book.

Q. What is your estimate of it?

A. I would think about 7 or 8 miles.

Q. You are including in this area the Dundee fruit?

A. Well, I couldn't be positive where I hauled that Dundee fruit. I do remember some fruit I hauled from Strong, and Olson, and Stiles from Haines City and from Davenport.

Q. You don't know how much?

A. No, sir, I don't.

Q. You don't know how much you paid for it?

A. No, I don't.

Q. You don't know just when you got it?

A. No, sir, I don't.

Q. You didn't take any of it? It was done by people after you bought it? You didn't do the hauling yourself?

A. No, sir, I just did the selling.

Q. You didn't make any contracts with the people that you could produce? Just paid them cash for so many boxes? No written contracts?

A. That's right.

Q. You can't name the people you bought from?

A. I can name the growers that I have handled their fruit for the last five or six years. I might not have handled it every year, but the growers I bought from in that vicinity, I can give you some of them names.

Q. You don't know how much you bought from any one of them?

A. No, sir.

Q. You didn't do any hauling for the Holly Hill Fruit Products where they bought the fruit?

A. I have hauled some for them.

Q. That was all within a ten mile area?

A. Yes, sir, I think so.

Q. All within ten miles of the packing house?

A. Yes, all I hauled for them.

Q. For some reason Mr. Di Chrístini, Manager of the Holly Hill Fruit Products, told you he didn't want you to buy any fruit in '38 and '39 except in the area? Is that correct?

A. That's right.

Q. Did he tell you why?

A. No, he didn't.

Q. You delivered fruit to other canners besides the Holly Hill Fruit Products?

A. Yes, sir.

Q. From the same people?

A. I wouldn't be positive, but I would say so. Yes, sir. From the same groves around there.

Q. These other packing houses didn't tell you to stay within a ten mile limit?

A. No, sir.

Q. And you didn't?

A. No, sir, I didn't.

Q. But when you hauled fruit from a grove for Mr. Di Christini it was within a ten mile limit?

A. As near as I can remember.

Q. But if it was for some other packing house it wasn't necessarily within the ten mile limit?

A. To the best of my knowledge, no.

Q. You live in Haines City?

A. Yes, sir.

Q. Do you know how many people live there?

A. No, not exactly.

Q. How many people live there?

A. About three thousand, I guess.

Q. That's been true ever since the first of 1938, hasn't it?

A. What?

Q. There has been three thousand people there—

Mr. Huffaker: (Interrupting):

Objected to as being immaterial and beyond the issues.

. . . . Argument off the record.

The Court:

He may be permitted to answer.

Mr. Garrett:

Q. Ever since January, '38, there has been three thousand people there?

A. I haven't counted them and I don't keep up with the census.

Q. That is your estimate?

A. I would say somewhere near that.

Q. Haines City is within what distance of Holly Hill?

A. I think it is four miles. I would say about four miles.

Q. Haines City is an incorporated town? You pay city taxes?

A. Yes, sir, my father does.

Q. You came here at the request of Holly Hill Fruit Products?

Mr. Huffaker:

Objected to. It is a matter of record and admitted.

The Witness:

I don't know anything only I just got a subpoena to come to Court and I came up here. I try to tell the truth.

Mr. Garrett:

Q. You never discussed this matter before you came in the Court Room?

A. No, sir.

Q. You haven't talked it over with the lawyers?

A. No, sir.

Q. Had no conversation with them at all?

A. No, sir.

Mr. Garrett:

That's all.

(Witness excused.)

60 JESSE ROBERTS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live, Mr. Roberts?

A. Haines City.

Q. Are you a grove owner?

A. Yes, sir.

Q. Where is your grove located, Mr. Roberts?

A. About a mile and a half east of Haines City.

Q. According to the records of Holly Hill Fruit Products there was purchased from you a quantity of fruit—grapefruit, during the seasons of '38-'39 and '39-'40. Do you remember selling fruit to that company?

A. Yes, sir.

Q. From what grove did you sell that fruit?

A. That came from what is known as the John E. Stearns grove. That was in Section 32-27-27, which makes it about two miles farther south.

Q. Now, is that true of all the fruit shown on all records that you were paid for—came from that grove?

A. From the two groves. My own grove and the Stearns' grove. My own grove is in the north half of Section 27-27, southwest quarter.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. Let me locate this a little clearer. You go down the ridge, after you get to Haines City, to get to either of your groves?

A. No. You go toward Winter Haven on the old road just about two miles from the center of the city.

Q. Of Haines City?

A. Yes, sir.

Q. And in order to be hauled to Holly Hill it has to come that two miles to Haines City, and then north to Davenport?

A. Yes, sir.

Q. That is your grove?

A. No, no, that is the Stearns' grove.

Q. Where is yours.

A. A mile and a half east of Haines City.

Q. On what road?

A. Ensign Avenue.

Q. That has to come that mile and a half and then go north?

A. It practically comes in a mile to strike the main road.

Q. You don't happen to know how much you sold to packing house those two seasons?

A. No, not exactly.

Q. Approximately?

A. About 46 boxes were sold and the balance went into the pool.

Q. How much of this went into their packing house?

A. Well, now, I don't know, I think probably 15 or 1,600 boxes of this.

Mr. Garrett:

That's all.

(Witness excused.)

62 H. J. McKEOWN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live?

A. One mile south of Davenport. One mile south of Davenport.

Q. You own a grove there?

A. Yes, sir, and live on the grove.

Q. Do you own any other grove?

A. No, sir.

Q. It appears from the records of Holly Hill Products, at Davenport, that they handled certain grapefruit for you during the season of '38-'39 and '39-'40?

A. That's right.

Q. They did handle that fruit?

A. Yes, sir.

Q. Where did it come from?

A. My grove.

Mr. Huffaker:
That's all.

Mr. Garrett:
No questions

(Witness excused.)

63 HARRY STROHM, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live?

A. Davenport.

Q. You own a grove?

A. Yes, sir.

Q. Where is your grove located?

A. There is one about seven-tenths of a mile from the center of the town, and the other about three and three-tenths from the center of the town.

Q. What direction from the town is the second grove?

A. One is southeast and the other is northwest.

Q. During the fruit seasons of '38-'39, and '39-'40 did Holly Hill Fruit Products, Inc. handle any fruit for you?

A. '39 and '40?

Q. Yes, either one of those two years?

A. Yes, they handled part of it.

Q. If their records show that they handled a quantity of fruit from you where did that fruit come from?

A. Well, part of it came from the grove about three and three-tenths miles, and there was part of it that came from a grove further out, that I believe they put through in my name, that I have charge of for another party; about seven miles northwest of town.

Q. During those seasons, Mr. Strohm, did you sell any fruit from these groves to Mr. B. C. Cook?

A. I have sold Mr. Cook and others, but I can't say definitely it was sold that year, but I believe it was that year of the freeze.

Q. Do you know where he delivered the fruit?

A. No, I do not.

Cross Examination.

By Mr. Garrett:

Q. You never handled, through Cook or the Holly Hill people, from these three groves, is that right?

A. No, there is other groves that I have looked after that Cook has bought the fruit off of.

Q. Where are they located?

A. One of them, just about due west of Davenport about two and a half miles.

Q. All right, the rest of them?

A. There is one south of Davenport about a mile. These groves are not my groves.

Q. Where are the rest of them? Is that all?

A. Just a moment, there was another one at that time about two and a half miles southwest of the town.

Q. Yes?

A. I believe that covers them except what I have mentioned.

Q. Are you connected in any way with Holly Hill Fruit Products?

A. No, sir.

Q. You don't have any cultivation contract with them?

A. Not at present. No.

Q. You did in these seasons?

A. I did two years ago.

Q. Two years ago makes it '40. How long did you have that connection with them?

A. About—I should say about six months, or something like that; six or seven months.

Q. Six or seven months of the season of '39-'40?

A. No, it was '40 and '41.

Q. That is the only time that you had business with them in that relation?

A. Yes, sir.

Q. You are a caretaker as well as owner, are you?

A. To a certain extent, that is, groves belonging to my friends.

Mr. Garrett:

That's all.

(Witness excused.)

66 JOHN WEATHERFORD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Mr. Huffaker:

Q. Where do you live?

A. Lakeland.

Q. What is your business?

A. Fruit dealer.

Q. In what way are you a fruit dealer?

A. Buy and sell.

Q. Operate your own truck?

A. Yes, sir.

Q. Do you do business with canneries?

A. Yes, sir, to a great extent.

Q. The records of Holly Hill Products show that they handled, or purchased from you, fruit during the citrus season of '39-'40. Do you recall those dealings? Do you?

A. Yes, sir, I remember selling them some fruit.

Q. Did you have any instructions from Mr. Di Christini as to what territory to handle fruit?

A. Yes, sir.

Q. What did he tell you?

A. To get it within an area of ten road miles.

Q. All this fruit that appears upon the record of Holly Hill Fruit Products, Inc. that was handled for you or purchased from you, what territory did that come from?

A. Well, I have no record of what places it was loaded because I didn't keep records at that time, but I tried to hold it down within ten miles and I am pretty sure I did.

Q. Where were those groves located?

A. Haines City and I think I got some at Lake Alfred, International Fruit, Di Giorgio now, and probably a little from Dundee.

Q. I am speaking about the grove the fruit came from.

A. The grove? I don't believe I hauled any from groves into there.

Q. This fruit you hauled from packing houses, did you make any inquiry to find out where it came from?

A. No, sir.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. Mr. Weatherford, did you ask Mr. Di Cristini why he put that limitation on?

A. He told me—he said it was some kind of rule, but he said he wasn't supposed to buy fruit from over a certain distance.

Q. So you don't know where the packing house bought it?

A. No, sir, I didn't.

Q. All you delivered to him was packing house fruit?

A. I am pretty sure it was.

Q. This was in the season of '39-'40 after the freeze?

A. Yes, sir.

Mr. Garrett:

That's all.

Re-Direct Examination.

By Mr. Huffaker:

Q. Was any of that fruit bought from Haines City Citrus Growers Association?

A. I didn't keep the record. He told me—

Q. (Interrupting.) Do you remember if you bought any fruit from that association?

A. I bought quite a lot of fruit from the Association, but I don't remember if any of it went to them or not.

Q. You know that the Haines City Citrus Growers is a co-operative and that the members' groves are near Haines City?

A. Yes, most of them are; right in there.

Q. The packing house at Lake Alfred, who ran that?

A. It was the Exchange at that time. It is Lake Alfred Packing Company now.

Q. What other one now?

A. The International Fruit, Lucerne Park. It's Di Giorgio now.

Q. Mr. Weatherford, do you know of the fact that the International Fruit Company groves are in a combine?

A. Well, they have some building around at Lynchburg. They have groves scattered all around that vicinity, and they have groves in the northern part of the state.

Q. You didn't buy any up there?

A. No, I said I got it some place closer.

Q. Do you know of any groves the International owns beyond Lucerne Park and Auburndale?

A. No, I don't think so.

Mr. Huffaker:

That's all.

Re-Cross Examination.

By Mr. Garrett:

Q. How far is Lake Alfred from Haines City south?

A. I don't know; I don't know just how far; ten or twelve miles.

Q. And Haines City is four miles south of Davenport?

A. About that.

Q. How far is Lucerne Park southeast of Haines City?

A. I imagine about six miles.

Q. And this International packing house was at Lucerne Park?

A. It is all the same.

Q. And the other was at—

A. (Interrupting.) Dundee.

Q. You got some from the International at Dundee?

A. Yes, sir, I buy from those houses every year.

Q. How far is Dundee east, or southeast of Haines City?

A. Seven or eight miles; something like that.

Q. How far is Auburndale south of Haines City?

A. That is fifteen, I imagine.

Q. And the way you haul in your trucks, you would haul from these points to Haines City and Haines City north to Davenport?

A. That's right. I don't remember taking any from Auburndale.

Q. You don't know where the fruit came from?

A. I picked it up at the packing house.

Q. The Lynchburg Grove is slightly south of Lake Alfred?

A. It is over to the right of Lake Alfred, over towards Auburndale.

Q. Which town is it closest to?

A. I believe it is closest to Lake Alfred.

Q. How many miles?

A. Oh, a couple of miles.

Mr. Garrett:

That's all.

(Witness excused.)

70 MRS. V. J. MARTIN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Mrs. Martin, you live in Davenport?

A. Yes, sir.

Q. Is your home inside the town limits?

A. Yes.

Q. How long have you lived there?

A. Six years.

Q. Do you own any groves in that territory?

A. We own one grove and lease three others.

Q. Where is the grove you own?

A. In Davenport.

Q. Where are the three leased ones?

A. They are out on the Holy Hill drive.

Q. About how many miles?

A. The farthest away is five miles.

Q. It appears from the records of Holly Hill Fruit Products, Inc. that during the seasons '39-'40 they handled certain fruit for you. Do you recall if that is true?

A. Yes.

Q. What groves did that fruit come from?

A. From the 40 acre grove five miles from Davenport, and there is another small grove about four miles.

Q. You sold this fruit direct, did you?

A. We sold it through what they call the pool.

Q. In addition to the sale of this fruit did you sell any to Mr. B. C. Cook?

A. Not that I recall.

Mr. Huffaker:

That's all.

Mr. Garrett:

No questions.

(Witness excused.)

72 C. C. SPENCER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. I believe you live at Haines City?

A. Yes, sir.

Q. Are you a grove owner?

A. Haines City Heights, Incorporated; I am manager.

Q. You manage it?

A. Yes.

Q. Is that a grove proposition?

A. Yes, sir.

Q. How many acres?

A. Well, there is 350 acres in the grove.

Q. Where is it located?

A. This particular—

Q. (Interrupting.) I don't want the legal description.

A. North of Haines City.

Q. How far north?

A. 80 acres within the city and the balance joins it.

Q. 220 beyond it?

A. All joined together.

Q. It appears from the records of Holly Hill Fruit Products that they handled for you certain fruit during the season of '38-'39. Do you recall that they did?

A. Yes, a small amount.

Q. What grove did that come from?

A. The Haines City Heights Grove.

Q. You don't recall which part of the grove? Whether it was in the city limits or not?

A. Yes, it came out of the eastern part of the northeast of northeast 20-27-27.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. Mr. Spencer, did you make it a practice to sell this fruit from that grove to the Holly Hill Fruit Products, Inc:?

A. That is the only sale I have made to them.

Q. As a matter of fact, is your grove on a good road running into Haines City?

A. Yes, sir.

Q. There are two, three or four packing houses there in Haines City, aren't there? Are you a member of the Haines City Association?

A. No, I am independent.

Q. Do you usually sell to those Haines City people?

A. No, I wouldn't say generally. We generally sell to anyone that comes along—

Q. (Interrupting.) Depending on the best price?

A. Yes, sir.

Q. How long have you lived there?

A. Since '20.

Q. How many people live there?

A. About 3,500.

Q. Has that been so since the first of January, '38?

A. Yes, I would think so.

Q. Haines City is about how far from Davenport? Air miles?

A. About three miles, air miles, I should say.

Q. How many road miles?

A. About four.

Q. Haines City in an incorporated town, isn't it?

A. Yes, sir.

Q. It has been since January 1st, '38, is that right?

A. I don't know when.

Q. I mean long before that?

A. Way on back of that, yes.

Q. Would you describe your grove as in the general vicinity of Haines City?

A. Well, I believe that that lay-out was laid out by the Holly people. It is laid out in five acre tracts. It is closer to Holly Hill.

Q. Closer to Holly Hill than Haines City?

A. No, it is not closer than Haines City, but I think it is a part of what was laid out for Holly Hill.

Q. Which is it closer to?

A. I imagine to Haines City.

Q. Part of it is in the corporate limits?

A. No, but not that particular forty this came out of.

Q. On part of that grove you pay city taxes to Haines City, don't you?

A. Yes, sir.

Q. It is in the immediate locality of Haines City, isn't it?

A. Oh, yes.

Mr. Garrett:

That's all.

(Witness excused.)

75 MRS. ALEXANDER WARREN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Mrs. Warren, do you live in Haines City?

A. Yes, sir.

Q. How long have you lived there?

A. Well—

Q. (Interrupting.) Since 1938, isn't it?

A. Yes, sir.

Q. Before 1938?

A. Yes, sir.

Q. You own some groves at Haines City?

A. Yes, sir.

Q. I believe they are right around Haines City? Right in Haines City?

A. Well, they are right around Haines City. I have one in Haines City.

Q. All in less than ten miles of Davenport?

A. Yes, as the crow flies.

Q. During the season of '40 it appears the Holly Hill Fruit Products, Inc. handled some grapefruit for you. Do you recall that?

A. Yes. I don't know the years, but I know they handled some.

Q. Did they handle it more than one time?

A. I don't think they did.

Q. One season?

A. Yes, sir.

Q. That was after the freeze in 1940 that you sold the grapefruit? Anyway, it was one of those years?

A. One of those years; I couldn't tell you, but they have the accounts.

Q. They have a record of all that fruit? Where did that fruit come from?

A. From a grove just beyond—a little beyond the city limits.

Q. Which direction?

A. The Cemetery Road, we call it; that is east.

Q. Right east of it? Grapefruit grove, isn't it?

A. Yes, sir.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. All these groves are in the immediate locality of Haines City, aren't they?

A. All but this, I would say.

Q. Where are those?

A. They are down on what is called the Kokomo Road.

Q. Is that towards Davenport or the other way?

A. Well, I couldn't tell you; I go towards Lake Hamilton.

Q. How far from Haines City are those groves?

A. As the crow flies?

Q. No, as the road runs?

A. As the road runs, I think six miles.

Q. How far do you put Davenport from Haines City by the road?

A. From this grove?

Q. No, from Haines City.

A. Well, I have never looked at the mileage. I would say not over four miles.

Q. But the particular grove that this fruit was sold off was on the Cemetery Road?

A. Yes, sir.

Q. Inside or outside the city limits of Haines City?

A. Outside.

Q. You have lived in Haines City quite a number of years?

A. Yes, sir.

Q. About how many people live there?

A. At the present time?

Q. Yes.

A. I haven't heard the census but I guess I would be safe in saying 3,000.

Q. That has been true since the first of January, '38? There hasn't been any—

A. (Interrupting.) Yes. A good many people have gone, out for work, now.

Q. Well, there were more then?

A. Well, there are a number of families moved away to do work elsewhere.

Q. There are less people now than any time since the first of '38 in your opinion?

A. Well, I say, yes, in my opinion.

Q. There are about 3,000 now?

A. Well, I think so.

Q. And Haines City is in the center of a citrus producing area, isn't it?

A. It is considered so.

Q. There are a lot of packing houses right there at Haines City?

A. There are only two operating.

Q. Which are those?

A. The Haines City Citrus Growers and the American Fruit Growers.

Q. And your grove is in the immediate locality of those two packing houses?

A. Very close, yes, sir.

Mr. Garrett:

That's all.

(Witness excused.)

79 J. A. LANGLEY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live?

A. Haines City.

Q. Have you lived there a number of years?

A. Yes, sir.

Q. Are you a grove owner?

A. Yes, sir.

Q. In addition to being a grove owner yourself, do you handle fruit for any other people?

A. Yes, sir.

Q. As a broker or caretaker?

A. Caretaker.

Q. You are in the caretaking business?

A. Yes, sir.

Q. Where is your own grove located?

A. One in Haines City, one in Auburndale.

Q. In the City of Auburndale?

A. No, outside.

Q. Which direction?

A. East of Auburndale.

Q. Where are the groves you take care of?

A. All around Haines City.

Q. In the Haines City territory?

A. All that I take care of.

Q. It appears from the records of Holly Hill Fruit Products, Inc. that during the season of '40 they handled some grapefruit, considerable grapefruit, for your account. Do you recall that they did?

A. Yes, sir.

Q. You sold it to them?

A. Yes.

Q. What groves did it come from?

A. Well, I could hardly tell you. In my own groves—other people's; I don't have any record.

Q. Were those groves in the Haines City territory this fruit came from?

A. Most of them were; one probably wasn't.

Q. Which one?

A. The one at Hesperides.

Q. How much came from Hesperides?

A. Well, I could hardly say how many boxes. I didn't keep a record.

Q. The comparative quantities? It appears that there was handled for you a total of 2,496 boxes?

A. Probably, a third of it.

Q. And the other two-thirds from Haines City?

A. Haines City territory.

Q. Hesperides is six or eight miles south of Lake Wales?

A. I don't know exactly; something like that.

Q. Is it south of Lake Wales?

A. Yes, sir.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. South of where? Lake Wales?

A. Yes, sir.

Q. How far is Lake Wales south or southeast of Haines City?

A. I don't know; they claim about 17 miles.

Q. These groves you take care of are in the immediate vicinity of Haines City?

A. I should say within a radius of 10 miles.

Q. North, or east, or where?

A. All around Haines City.

Q. Some of them would be 10 miles east, and some 10 miles south? Is that right?

A. Well, probably so; I don't know whether it would be that much or not.

Q. You don't know from what particular grove you sold this particular grapefruit?

A. No, I couldn't tell you that.
Q. You live at Haines City?
A. Yes, sir.
Q. How long?
A. Since 1927.
Q. How many people live there?
A. I don't know.
Q. Well, have you got a guess? Are there as many as 3,000?
A. I think they claim 3,500.
Q. That's been the same since 1938, hasn't it?
A. I think so.
Q. There are packing houses there at Haines City, are there not?
A. Yes, sir.
Q. Are these packing houses nearer or further away than the Holly Hill Packing House?
A. We think it is nearer.
Q. You would put the whole of these groves as centering around Haines City?
A. Yes, they center around Haines City.
Q. Davenport isn't as big as Haines City, is it?
A. No.

Mr. Garrett:
That's all.

(Witness excused.)

83 N. H. STILES, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:
Q. Where do you live?

A. Haines City.

Q. How long have you been living there?

A. A little over 19 years.

Q. Are you a grove owner?

A. Yes, sir.

Q. How many groves have you?

A. Two.

Q. Where are they located?

A. Within the city limits of Haines City.

Q. It appears from the records of Holly Hill Fruit Products, Inc. that in the 1940 season they handled a small amount of grapefruit for you. Do you recall the circumstances?

A. Yes, sir.

Mr. Garrett:

What season?

Mr. Huffaker:

1940.

Mr. Huffaker:

Q. What grove did that fruit come from?

A. I think it possibly come from both groves; I am not positive. I sold it to Mr. Cook, and I know he sold them to Holly Hill, and—

Q. (Interrupting.) They dealt direct with you, didn't they? The Holly Hill people?

A. I am not sure. For the last five years, sometimes I dealt direct, and sometime I sold to Mr. Clark.

Q. If during 1940 the records of Holly Hill Fruit Products, Inc. show that they purchased certain fruit from you and the check was issued to you, that would be fruit that was picked from those two groves—

A. (Interrupting.) Yes, sir.

Q. (Continuing.) —and nowhere else?

A. No, sir.

Q. Your groves are in the immediate locality of Davenport?

A. Well, I would say that Davenport is along about four miles from Haines City.

Q. I think that is all. Did you have a rain yesterday?

A. Very likely; last night.

Mr. Huffaker:

That's all.

(Witness excused.)

85 MRS. H. EVANHOUSE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. I believe you live at Haines City?

A. Yes, sir.

Q. How long have you lived there?

A. 18 years.

Q. Do you own a grove?

A. Yes, sir.

Q. Where is that grove located?

A. Well, one grove is in the city limits, and the other grove is out of the city limits, but just the description—

Q. (Interrupting) I don't want the legal description. What direction from Haines City?

A. East of Haines City.

Q. How far east?

A. Between six and seven miles.

Q. Close to Davenport, then?

A. Yes, sir.

Q. Do you remember whether or not during 1940 the Holly Hill Fruit Products, Inc. handled some grapefruit for you?

A. Vaguely I do; yes.

Q. If their records show that they had dealings with you and paid you for fruit, where would that fruit come from?

A. I, personally, can't tell you; my husband took care of the business at that time, and I don't know which grove.

Q. You own the groves, do you?

A. Yes, sir.

Q. Your husband didn't sell any fruit from any other groves?

A. Yes.

Q. He didn't deal in fruit or sell—it would be from one of the two groves?

A. No, sir.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. One of these groves is in the city limits of Haines City?

A. Yes, sir.

Q. And where is the other?

A. East of Haines City.

Q. How far is this other grove from Davenport?

A. Well, I would say between three and four miles.

Q. Then it must be northeast of Haines City?

A. I presume so, yes; it is closer to Davenport than Haines City.

Q. It is between the two, is that right?

A. Yes, sir.

Q. The other is in the immediate locality of Haines City, is that right?

A. Yes, right in the city limits.

Mr. Garrett:

That's all.

(Witness excused.)

87 N. A. MIXON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live, Mr. Mixon?

A. Where do I live?

Q. Yes, sir?

A. Lake Hamilton.

Q. How long have you lived there?

A. About 28 years.

Q. Are you a grove owner?

A. Yes, sir.

Q. How many groves have you, Mr. Mixon?

A. Of my own, I have but one—two, but I have had in my charge there about, well, from 70 to 120 acres for the last fifteen years.

Q. Those groves you took care of, where are they located?

A. Right in the Lake Hamilton section there. They are all right around the town except one at Haines City.

Q. That is sufficient. The records of Holly Hill Fruit Products, Inc. show that they handled certain grapefruit for you, a quantity of grapefruit for you, in the season of '38?

A. '38?

Q. Yes. Do you recall that they did handle some fruit for you?

A. Well, I think so.

Q. The records show that the dealings were with you and the check made to you, where did that fruit come from?

A. It came from those groves right there in that section; the ones I have charge of; in '38.

Q. Your own groves and others?

A. Yes, sir.

Q. It appears from the records that the Holy Hill Fruit Products had dealings with Mixon & Company and handled that—

A. (Interrupting.) Was that in '38 or '39?

Q. We have here 1938.

A. I think it was '39 that I handled a little fruit, that is, he did the hauling.

Q. Who did the hauling?

A. A man by the name of Cox.

Q. He was a partner of yours?

A. Well, he was hauling fruit that he bought on my bond. I am under bond—

Q. (Interrupting.) Where did that fruit come from?

A. All came right in there with the exception of a few loads just beyond Dundee there.

Q. Just across the marsh from Dundee?

A. Well, toward the Eloise Loop.

Q. It was outside the Eloise Loop, beyond the Eloise Loop?

A. Before you get into the Eloise Loop, but just across from Dundee.

Q. How many miles west of Dundee?

A. I would say somewhere around four miles.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. All of these groves you took care of were right in the Lake Hamilton section, is that right?

A. Yes, right around the town.

Q. Lake Hamilton is a little town—a little to the east of Haines City?

A. South of Haines City.

Q. About how far?

A. Between five and six miles.

Q. Where is Dundee compared with Lake Hamilton? Further on, isn't it?

A. One mile further south.

Q. Are those towns incorporated?

A. Both of them; come together—

Q. (Interrupting) Both have packing houses, don't they?

A. Yes, sir, Dundee has a packing house. Lake Hamilton has been closed for years.

Q. You'd say that these groves were in the immediate locality of Lake Hamilton, is that right?

A. That is right.

Q. In order to get to Davenport you would have to come in from Dundee or Lake Hamilton to Haines City and then go north?

A. That is right up to Haines City and then to Davenport.

Q. How far would it be from Haines City to Davenport?

A. I think four miles.

Q. You add that to the distance to Lake Hamilton?

A. Yes, sir.

Q. And that's between five and six miles?

A. Somewhere like that.

Q. Your groves were not in the main part of town?

A. A little more east of Lake Hamilton.

Q. Further away from Haines City?

A. No, they would have been closer to Haines City.

Q. Then, they wouldn't be east, would they?

A. They lay east but a little north of east.

Q. But you come into Lake Hamilton before you go to Haines City and Davenport when you haul fruit?

A. That's right.

Q. And how far northeast of Lake Hamilton?

A. Oh, it wasn't really northeast, but they were on the east side.

Q. Well, how far?

A. I don't know. The lower side of the incorporation. I suppose about a mile or two miles.

Q. What do you mean by the lower side? The one nearest Haines City?

A. The one farther south.

Q. You don't know how much of this fruit came from further groves?

A. No, I couldn't give you that. I don't keep any records, as cash put out, any more than those tickets.

Q. That is true of the N. A. Mixon Company stuff, the same as N. A. Mixon?

A. Well, I don't know about that company. But it was all supposed to be mine, but this man did the hauling for me.

Q. And what you sold to the Holly Hill Fruit Products, Inc., was grapefruit—after the fruit came from any of these groves that you happened to have a chance to sell?

A. Just when I had a chance.

Mr. Garrett:

That's all.

(Witness Excused.)

92 JAMES EDWARDS, Called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live?

A. Just out of Dundee, Florida.

Q. Which direction?

A. It would be almost due east.

Q. You have lived there a number of years?
A. Yes, sir.
Q. Grove owner?
A. Yes, sir.
Q. Where are your groves located?
A. I have one inside the city limits; ten acres on the Lake Hamilton side.
Q. The records of Holly Hill fruit Products, Inc. show that there were purchased from you, or handled for you, certain grapefruit in 1940. Do you remember the occasion?
A. I do.
Q. Where was that fruit picked?
A. From the Dundee grove.

Mr. Huffaker:
That's all.

Cross Examination.

By Mr. Garrett:
Q. Where is this Dundee grove in relation to the center of town?
A. It's possibly six blocks from the center of town; possibly, eight blocks.
Q. Which direction?
A. About half of it east and the other half south.
Q. When you haul fruit from there to Davenport you haul it into Dundee and then north from Haines City to Davenport, is that right?
A. Yes, sir.
Q. Well, actually this grove is in the immediate Locality of Dundee?
A. Yes, sir.
Q. Dundee has a packing house, hasn't it?
A. It has a packing house, yes, sir.
Q. Dundee is how far from Haines City?

A. Supposed to be three miles.

Q. Only three miles from Haines City or Lake Hamilton?

A. From Lake Hamilton.

Q. From Haines City?

A. About seven; I think that is what the poster in the center of the street says.

Q. Seven miles, Dundee to Haines City?

A. Yes, sir.

Q. And Haines City to Davenport is about four, is that right?

A. I couldn't say for sure.

Q. You are not familiar with that distance?

A. I have traveled it lots of times, but I really don't know.

Q. The two packing houses—at Dundee, and the packing house at Haines City were being operated at the time you sold this fruit at Davenport?

A. One at Haines City.

Q. And one at Dundee?

A. Yes, sir, one at Dundee—the Exchange.

Mr. Garrett:
That's all.

(Witness Excused.).

94 R. M. BIELING, Called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live?

A. East of Lake Hamilton.

Q. You own a grove there?

A. Yes, sir.

Q. It appears that in '38 the Holl Hill Fruit Products, Inc. handled a small number of boxes of grapefruit for you.

A. Yes, sir.

Q. Where did that fruit come from?

A. Off my own grove.

Q. East of Lake Hamilton?

A. Yes, sir.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. How far is your grove east of Lake Hamilton?

A. About three miles from the post office, but it is a little northeast of Lake Hamilton.

Q. So when they hauled that fruit to Davenport they hauled it three miles in to Lake Hamilton and then to Haines City and then to Davenport?

A. No, sir.

Q. How did they haul it?

A. I hauled it myself. I hauled it up to the hard road and then in through Haines City; I left off a mile.

Q. How far did you travel in order to get to Davenport?

A. I couldn't tell you that.

Q. How far to get to Lake Hamilton?

A. Two miles to get to the hard road.

Q. Then, how far to Haines City.

A. About three miles from the filling station where we turn there to Haines City.

Q. When you got to Haines City you went through the town, is that right?

A. Straight on to Davenport, yes, sir.

Q. Your fruit is in the immediate locality of Lake Hamilton?

A. Yes, sir.

Q. It is nearer to Haines City than it is to Davenport?

A. Why, certainly.

Mr. Garrett:

That's all.

(Witness excused.)

96 JULIUS MATTSEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. You live at what place?

A. I used to live on what they call Lake Hamilton Road.

Q. Were you living there in '38?

A. Sure.

Q. Where is your grove located?

A. Right at the house.

Q. On Lake Hamilton Island?

A. Yes, sir.

Q. Do you recall the deal with Holly Hill Fruit Products, Inc. in 1938 to handle some of your grapefruit?

A. No; it comes right down to it; it wasn't. It was the fellow what stayed in the garage. The best I can remember, he went to work and picked up the drops.

Mr. Garrett:

I will agree that they handled it if the books show it.

Mr. Huffaker:

Q. The books show that they bought the fruit and you were paid for it.

A. I don't know if it all came from it, because I gave it to the fellow or charged a little for the drops. But he picked drops from other groves.

Cross Examination.

By Mr. Garrett:

Q. Where is your grove? Where is Lake Hamilton Island?

A. In Section 8—

Q. (Interrupting) No, how far from town? How far from the nearest town?

A. About four and a half from Haines City.

Q. Which way?

A. It is south on west.

Mr. Garrett:

That's all.

Mr. Huffaker:

Q. Give me the section, township and range?

A. Section 8, 27, 28.

Mr. Huffaker:

That's all.

(Witness excused.)

97 TOM KEEGAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live?

A. I live in Dundee.

Q. Are you a grove owner?

A. Yes, sir.

Q. Where is your grove located?

A. I would say about half a mile south of Dundee.

Q. It appears from the records of Holly Hill Fruit Products, Inc., that in the years 1940 and 1939 they handled certain fruit for you?

A. Yes, sir.

Q. What grove did that come from?

A. It came from that grove.

Q. From your own grove a half mile south of Dundee?

A. Yes, sir, I would say it is between a quarter and a half. I wouldn't say a full half.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. Your grove is right in the immediate locality of Dundee?

A. Yes, sir, within the city limits.

Mr. Garrett:

That's all.

(Witness excused.)

99 PAUL SWANSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live, Mr. Swanson?

A. Live in Lake Hamilton.

Q. How long have you lived there?

A. Ten years.

Q. Are you a grove owner?

A. Yes, sir.

Q. Where is your grove located?

A. Just east of Lake Hamilton; a mile east.

Q. The records of Holly Hill Fruit Products, Inc. show that they handled certain fruit for you in 1940. Grapefruit.

A. Yes, sir.

Q. Do you recall the circumstances?

A. Yes, sir.

Q. What grove did that come from?

A. From the grove where I live; the only grove I own.

Mr. Huffaker:

That's all.

Cross Examination.

By Mr. Garrett:

Q. In delivering that fruit to the Davenport packing house, it would be taken one mile into Lake Hamilton and then carried to Haines City then north to Davenport?

A. That's right.

Q. This grove of yours is in the immediate locality of Lake Hamilton?

A. Yes, sir.

Q. Where are the nearest packing houses?
A. Well, at Dundee would be the nearest that is operating.
Q. Haines City packing houses are nearer than the Davenport?
A. Yes, sir.

Mr. Garrett:
That's all.

Re-Direct Examination.

By Mr. Huffaker:
Q. At that time was there a cannery at Dundee?
A. I am quite sure there was.

Mr. Huffaker:
That's all.

(Witness excused.)

100 RALPH SMITH, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:
Q. I believe you live at Dundee?
A. Yes, sir.
Q. Are you a grove owner?
A. No, sir.
Q. What is your relation to the grove business?
A. Well, buy and haul fruit.
Q. How many trucks do you operate?
A. Four at the present time.

Q. How many in 1940?
A. Two.
Q. 1939?
A. Two.
Q. Do you buy grapefruit and sell it to canneries?
A. Yes, sir.
Q. The records of Holly Hill Fruit Products, Inc., show that they handled grapefruit for your account, or bought grapefruit in 1939. Where did you get that fruit?
A. That came from Mr. Hornsby's grove.
Q. Where is that grove?
A. On Kokomo Road out from Lake Hamilton.
Q. A county road runs east from Lake Hamilton?
A. I couldn't say if it is a county road.
Q. Well, it runs east?
A. Yes, sir.
Q. That grove is located how far from Dundee? The approximate number of miles?
A. I should say about three back up this way (indicating).
Q. East or northeast?
A. You come a mile, or a little better, this way, (indicating), and turn to the left.

Mr. Huffaker:
That's all.

Cross Examination.

By Mr. Garrett:
Q. How did you haul that fruit to Holly Hill, take it Dundee, then to Haines City, and then to Davenport? Or some short cut?
A. I came from the grove to Lake Hamilton, to Haines City, to Davenport.
Q. How far was it from the grove to Lake Hamilton?
A. Well, I don't know exactly.

Q. Give me an estimate?

A. Maybe a couple of miles.

Q. From Lake Hamilton to Haines City?

A. Well, I still don't know exactly that distance, but it would be maybe four miles.

Q. And then from Haines City to Davenport, how far? I mean to this packing house?

A. Maybe four miles.

Q. And this grove that you are talking about, what was the name of the man that owned this?

A. Hornsby is his last name; I don't know his first name.

Q. In the immediate locality of Dundee?

A. No, sir, Lake Hamilton.

Mr. Garrett:

That's all.

(Witness excused.)

103 D. J. COSTNER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Huffaker:

Q. Where do you live, Mr. Costner?

A. Live three miles south of Davenport, about that, on a grove.

Q. In 1940 did you have any relations with Mr. Mabson?

A. Sure, H. B. Mabson.

Q. What was your relation? Grove caretaker?

A. Yes, sir, caretaker.

Q. You took care of the Mabson grove located in Section 8-27-27?

A. Yes, sir, close to three miles from Davenport.

Q. Three miles south?

A. Yes, sir.

Q. Do you remember that Holly Hill Fruit Products during 1940 handled certain fruit from the Mabson Grove?

A. Yes, they got some oranges.

Q. Did you have anything—supervising the picking and so forth?

A. Sure.

Q. All those oranges came from the Mabson grove?

A. Yes, sir.

Mr. Huffaker:
That's all.

Mr. Garrett:
No questions.

(Witness excused.)

The Court:
The Court will be in recess until 2 o'clock.

(After Recess—2:00 P. M.)

(Page 91 to 150, reported by E. Marshall Stifel.)

The Court:
You may proceed.

104 R. B. HUFFAKER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Reeves:

Q. You are Mr. R. B. Huffaker?

A. I am.

Q. Of Bartow?

A. Yes, sir.

Q. Mr. Huffaker, you are of counsel in this case, also?

A. Yes, sir.

Q. And you know the defendant is the Holly Hill Fruit Products, Inc., a Florida corporation?

A. Yes, sir.

Q. Do you have any connection with the corporation other than as counsel?

A. I am senior vice president, a member of the board of directors, and attorney for the company.

Q. Do you know when the company was incorporated?

A. The company was originally incorporated under the general incorporation law of 1925 either in the latter part of 1928 or 1929, and then it was re-incorporated under the 1931 Co-operative Act.

Q. And did you handle both of those incorporations?

A. Yes, I have done all of the legal work for the corporation since it was organized.

Q. When was it first organized?

A. Either 1928 or 1929; I believe 1928.

Q. How long have you held a position as director or officer of the corporation?

A. I couldn't state right off hand; I believe, at least, ten years.

Q. During that period of time have you had occasion to familiarize yourself with the general set up of the company?

A. I have.

Q. I hand you an instrument and ask you to identify it, please, sir (handing paper to witness).

A. This is a certified copy of the articles of incorporation of Holly Hill Fruit Products, Inc.

Mr. Reeves:

We offer this in evidence as Defendant's Exhibit No. A.

Mr. Garrett:
No objection.

The Court:
Let it be received.

. . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. A.

Mr. Reeves:
Q. (Handing paper to witness) And this one?
A. This is a certified copy of the by-laws of the Holly Hill Fruit Products, Inc.

Mr. Reeves:
We offer this in evidence as Defendant's Exhibit No. B.

Mr. Garrett:
No objection, go ahead.

The Court:
Let it be admitted.

. . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. B.

Mr. Reeves:
Q. Mr. Huffaker, I hand you herewith what purports to be a map (handing paper to witness). Will you identify that, please, sir.

A. This is a printed map from an official map of Polk County prepared by Lenord Trickle, engineer, drawn to scale—drawn to the scale customarily used in Polk County to locate lands and property.

Q. Now, I notice on this map that there have been some circles drawn in pencil. What are they?

A. Those are concentric circles drawn to a radius of 25 and 30 miles.

Q. Do you mean—

A. (Interrupting) 10, 15 and 25 miles.

Q. And have those circles been drawn to scales?

A. Yes, sir, they were drawn to scale.

Q. And will they show the locations of the towns like Haines City, Lake Hamilton, and Dundee that have been testified to and about this morning by the witnesses?

A. It does.

Q. Does that, also, show the section, township and range of the property located within Polk County?

A. It does.

Mr. Reeves:

We offer this map in evidence as Defendant's Exhibit No. C.

Mr. Garrett:

No objection.

The Court:

Let it be admitted.

. . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. C.

Mr. Reeves:

Q. Now, Mr. Huffaker, taking the map here before you, Exhibit No. C, and I notice the by-laws, Defendant's Exhibit No. B, show that the common stock of the corporations issued to and sold and owned only by the owners of bearing citrus groves located within Townships 26 and 27.

South Range 27 east, Polk County. Does that map you have before you show the location of those townships?

A. It does.

Q. Where, for the benefit of the Court, do those townships fall with reference to the circles that you have drawn?

A. Well, the first circle has a diameter of 20 miles, and radius of 10.

Q. Now, for the benefit of the Court, there was testimony this morning about groves at or near Lake Hamilton, does Lake Hamilton fall within 10 or 20 miles from Davenport?

A. The circle will fall in the town of Lake Hamilton as well as the lake itself.

Q. Does that mean the Town of Lake Hamilton is less than your first circle which would be. 10 miles from Davenport?

A. Yes, sir.

Q. Now, there was some testimony about Dundee, is that, also, within 10 miles?

A. Yes, sir.

Q. How about Haines City?

A. It is within the area of 10 miles.

Q. How about Auburndale?

A. Auburndale is in the next belt between the 10 mile radius and the 15.

Q. Now, how about Lake Alfred?

A. Lake Alfred is within the radius.

Q. Which radius?

A. 10 mile radius from Davenport.

Q. How about Lucerne Park?

A. It is within the 10 mile radius.

Q. There was some testimony by one of the men, as I recall it, that some of his fruit came from some grove down dear Hesperides—

A. (Interrupting) It is 7 miles east of Lake Wales and falls beyond the 20 mile radius.

Q. Between the 20 mile radius and the 25 mile radius?

A. Yes, sir.

Q. In other words, it would be less than 25 miles from Davenport?

A. Yes.

Q. There has been some other testimony with reference to Babson Park. Where is that located with reference to Davenport?

A. It is within the 20 mile radius.

Q. 20?

A. No, change that to 25.

Q. There is one other thing I meant to ask you, those two townships that are referred to in the by-laws, 26 and 27 of range 27 East, how far are those from Davenport?

A. The groves do not extent to the top of township 26, but only to Section 19; I believe that is approximately 5½ miles of the city limits to the north, and the other part of the territory is—Davenport is in Section 3 and 10 of 27-27.

Q. I hand you another map or sketch and ask you if you can identify that (handing paper to witness)?

A. This is a copy of a plat of the Holly Hill Fruit Products, Inc., Davenport, Florida, which was the original developer of the something like 4,000 acres of grove in Davenport, in this Township 26 and 27, and this map shows in red the member groves of the Association.

Mr. Garrett:

Q. What association?

The Witness:

A. Holly Hill Fruit Products, Inc.

Mr. Reeves:

Q. Are they all within Township 26 and 27 or Range 27?

A. They are.

Q. I notice they are or seem to be divided into small tracts, according to the legend, five acre tracts?

A. Yes, sir. Possibly, 5,000 acres of land is let out in five acre tracts called the Florida Development Company.

Mr. Reeves:

This map is offered in evidence as Defendant's Exhibit No. D.

Mr. Garrett:

No objection.

. . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. D.

Mr. Reeves:

Q. Mr. Huffaker, in preparing this case for trial did you attempt to ascertain where every box of fruit was produced that was handled by the defendant during the two seasons '38-'39 and '39-'40?

A. I went to the office frequently and conferred with the executive officers, Secretary and Treasurer and General Manager, and at my request the records were prepared—the statements were prepared based upon the records of the company showing the location of the groves and fruit that came from each particular grove.

Q. This morning there were references made to fruit sold to and delivered to some distributing company, can you explain that?

A. Grapefruit Distributors, Inc., is an ordinary commercial corporation that operates as a non-member of the Association. The Association can do business up to 50 per cent. of its total with outside parties, and this corporation with Headquarters at Davenport purchases outside grape-

fruit for the cannery and shares in patronage dividends like regular members.

Q. So that name that has appeared in the testimony this morning, and if it should appear later in the case, that's the company that they are talking about?

A. That is the Grapefruit Distributors, Inc.; that's the full name.

Q. Mr. Huffaker, in trying to get up information or evidence as to where this fruit came from, did you find that some of the fruit was bought from groves of which you had knowledge? Did you make up a memorandum?

A. I did.

Q. What is that memorandum? What does it have reference to, Mr. Huffaker?

A. Groves owned by the Ervin Estate '38-'39; our records show the purchase of considerable grapefruit from the Ervin Estate with which I have been connected ever since Mr. Ervin's death; ever since his death I have handled all of the legal business of the estate and I know the legal description of all of that property. The records will show that some grapefruit was purchased from Lucerne Park groves, all of which is shown on the map, and considerable grapefruit was purchased from the grapefruit grove at Lake Hamilton—

Q. (Interrupting) Wait a minute, Mr. Huffaker, how far are those from Davenport?

A. They were within the 10 mile radius.

Q. Within the ten mile radius?

A. Yes, sir.

Q. What else is there?

A. I have a heading called the Clay Binion groves and a legal description of it which is quite lengthy.

Q. Did some of the fruit for those two seasons come from that grove or those groves?

A. The fruit shown on the record as purchased from the Clay Binion Estate came from it.

Q. How far, approximately, is that grove from—

A. (Interrupting) That is called the Griffin Grove and is located approximately 4 miles northwest of Lakeland on the road between Lakeland and Cathaline and within the 25 mile radius.

Q. From Davenport?

A. Yes, sir.

Q. None of the distances you have given us, or attempted to place an estimate, are roads of travel other than air travel?

A. That's correct.

Q. As somebody has said this morning, "As the crow flies"?

A. Yes, sir, as the crow flies.

Mr. Reeves:

That's all.

Cross Examination.

By Mr. Garrett:

Q. Just what is the connection between Grapefruit Distributors, Inc. and Holly Hill Fruit Products, Inc.?

A. Legally, none. They are distinct and separate corporations.

Q. Do the same people own both?

A. No.

Q. Do they have the same officers?

A. No.

Q. The same directors?

A. No.

Q. No common directors at all?

A. No common directors.

Q. No common officers?

A. Yes, common officers.

Q. You do have common officers?

A. Yes.

Q. Who?

A. The officers of Grapefruit Distributors are the officers of Holly Hill, Inc.

Q. Who is manager of Holly Hill Fruit Products, Inc.?

A. Harry F. Di Cristini.

Q. Who manages Grapefruit Distributors, Inc.?

A. Di Cristini, also.

Q. And it was in 1938 that you changed over from a profit corporation to a co-operative?

A. That charter will give the date; I don't remember.

Q. Isn't it clear in your mind it was in 1938?

A. Let me see that exhibit? (Counsel handing exhibit to witness.) There was an error in my original testimony as to the date of transfer to a co-operative association; that was in February, 1934. This is the amended articles of incorporation instead of the original articles of incorporation, but, as I remember it, the charter was rewritten with amended articles in it.

Q. But was it rewritten so as to become a co-operative, or was it already a co-operative?

A. The original corporation was merged into a corporation under the Corporate Act of 1931 in 1934.

Q. And was this provision for the ownership of the corporation within these two townships one of the amendments?

A. It was amended in some particulars to enlarge the right of grove owners to acquire stock; the theory wasn't changed, Mr. Garrett.

Q. The theory wasn't changed?

A. No, sir.

Q. What was that theory?

A. Originally it was incorporated as a condition of owning common stock a person must own a lot or grove within this territory, and, I believe, they were limited to one share per lot or two or three shares per acre.

Q. What was the theory of limiting the ownership of stock to parties owning groves in those two townships?

A. To obtain the co-operation of the growers.

Q. In other words, that was a rule of thumb arranged for in the general vicinity of the canning plant—

A. (Interrupting) The canning plant wasn't in operation when this corporation first changed.

Q. It was a rule of thumb arranged to make members neighbors, so to speak? Is that right?

A. It was a corporation organized to save these grove owners in this territory originally bought by people in the north through Holly Hill Fruit Products, Inc. for the convenience and help of those growers in taking care of their groves; a community affair, and share in the profits.

Q. Do you mean by that that the Holly Hill Fruit Products, Inc., or some such subsidiary of Wilson & Toomer, put on a development scheme by which they sold groves in the neighborhood of Davenport, and they needed a canning plant to serve them, and, therefore, this organization of a fruit company and packing plant was organized to serve those particular groves?

A. The Holly Hill Fruit Products, Inc. was for the purpose of handling those groves—there is no separate corporation for the cannery; it is at one end of the packing house and was put in operation for the purpose of salvaging and processing the grapefruit from these groves, but the operation is not limited to the groves. The operation of a co-operative is confined to—it is not confined to the members, and they can do business with outside members up to 50 per cent. of their total produce handled. It was never the idea at all that the cannery was organized exclusively for the benefit of these growers.

Q. That was the primary purpose, in order to get volume and turn over they were willing to do business on a profit basis?

A. In order to run the plan economically, keep the men employed, and serve the grove owners in that vicinity—in the vicinity of that territory, they purchased fruit in dif-

ferent parts of the County in the same way that all of the packing houses were handled in that territory.

Q. And to the extent they purchased this fruit they were not on a co-operative basis with the people they bought the fruit from?

A. Yes, sir, they came in on the same basis. Under the law you can't do any business with an outsider without putting him on the same basis as a member of the Association. If you went down and got some of your fruit and put it into that packing house you would get the same percentage rebate at the end of the season.

Q. And does that account for Mr. Cook and Mr. Weatherford?

A. Grapefruit Distributors is the non-member; possibly, a few of these grove owners could be identified as officials of the company, and dealt directly with us, but Grapefruit Distributors is the—

Q. (Interrupting) You don't claim they were co-operatives?

A. No.

Q. You have prepared some sort of a schedule, a copy of which you have handed me—

A. (Interrupting) I didn't prepare them.

Q. Well, it has been prepared?

A. Yes.

Q. There is a percentage shown of the Holly Hill Groves Cannery Fruit and a percentage of Grapefruit Distributors, Inc. and the two percentages added together make up 100 per cent. of the volume.

A. I can't explain that.

Q. There is no co-operative relation between the Association and Grapefruit Distributors, Inc.?

A. Yes.

Q. What is that?

A. It is a patron of the co-operative.

Q. It goes out and buys from wherever it sees fit and sells or merely puts it through your plant?

A. Sells to the corporation—to Holly Hill Fruit Products, Inc. Holly Hill Fruit Products processes that fruit in its canner.

Q. And gives it the same percentage as every other owner?

A. The same percentage rebate.

Q. The same pools?

A. No, I don't understand all about that pool.

Q. What is the population of Haines City?

A. I don't know.

Q. You don't know?

A. The United States Census shows what the population is, and I refer you to that and the State's, also, Mr. Garrett.

Q. You have practiced law in Bartow for how long?

A. Since 1911.

Q. That is the County seat of Polk County and is 20 miles from Haines City?

A. Yes; 30 from Davenport.

Q. And you don't know approximately what is the population of Haines City?

A. No, I don't know.

Q. In circling these air distances for the fruit that goes to the Holy Hill Fruit Products, Inc., do you know of any that is delivered by air?

Mr. Reeves:

If the Court please, the question is objected to as being immaterial and irrelevant.

Mr. Garrett:

I want to know the difference between air distances and road distances.

Mr. Reeves:

If your Honor please, fruit is not delivered by airplane.

Mr. Garrett:

Then, he can say so.

The Court:

I don't know whether it is or not.

The Witness:

As witness and counsel, may it please the Court, I object to the question. It is an effort to make the witness ridiculous.

The Court:

It is not ridiculous. Is there any fruit delivered by air?

The Witness:

No.

Mr. Garrett:

Q. It all comes by trucks?

A. Absolutely.

Q. You have testified as to distances to the packing plant, did you take that into consideration at all? Your testimony as to distances to the packing plant doesn't take that into consideration at all, does it?

A. No, not according to this map.

Q. And however unfamiliar you may be with Haines City, you do know that Lakeland is how far by road from Davenport?

Mr. Reeves:

That is objected to as immaterial and irrelevant. The interpretation of this is that it is 10 radius miles, and we say it is 10 miles by air, and if the Court wants to go into that question and settle it once and for all, why, we will be delighted to do so.

Mr. Garrett:

We think the Court will not necessarily consider only the theory of counsel for defendant, as there is evidence for our theory as much as Mr. Reeves', and I think we have got a reasonable right to present our theory.

The Court:

Objection overruled.

Mr. Garrett:

Q. How far is Lakeland from Davenport?

A. I don't know exactly, Mr. Garrett; by road any ordinary travel map will show your mileage.

Q. You don't know?

A. I don't; I have traveled it hundreds of times but I have never checked it on my speedometer.

Q. It was over 10 miles, wasn't it?

A. Yes, sir.

Q. Would you say it was over 20 miles?

A. Yes.

Q. Would you say it was over 30 miles?

Mr. Reeves:

Objected to, if the Court please, as not being in cross of anything brought out on direct examination.

The Court:

Objection overruled.

The Witness:

What is the question?

Mr. Garrett:

Q. Would you say it was over 30 miles?

A. No, I wouldn't say it was 30 miles; I don't know.

Q. By road how far is this—

A. (Interrupting) Hesperides?

Q. (Continuing)—Hesperides?

A. It is, possibly, a little over 30 miles.

Q. How far is Lake Wales?

A. Lake Wales is about 25.

Q. How far is Loughman?

A. About 5 or 6 miles; my recollection is that it is only a short drive between the two towns—6, 7 or 8 miles.

Q. How far is Lake Alfred by road?

A. That road is fairly straight, and, I would say, Lake Alfred is just about 10 miles by road.

Q. Only 6 miles south of Haines City?

A. I think so; yes, sir.

Q. How far is Auburndale?

A. Well, Auburndale is about—right around 15 miles; possibly, a few miles more or less.

Q. All of this territory and these questions about these places I have asked you about are in what is known as the citrus producing section of Polk County?

A. They are.

Q. And practically all of them, unless it is Loughman, has one or more packing houses?

A. I believe so; yes, sir.

Q. They have good roads leading to those packing houses from the groves in the vicinity?

A. They do.

Q. In order to get any truck from any place like Dundee or Lake Alfred to Davenport you have to drive to two or three places with packing houses, don't you?

A. What place? Without repeating your question, what are the two towns you mentioned?

Q. Dundee or Lake Alfred.

A. Lake Hamilton and Haines City.

Q. Dundee itself has a packing house?

A. Yes, it has.

Q. And those packing houses in Haines City serve that particular neighborhood, don't they?

A. They do and considerable other territory.

Q. And the packing house at Dundee serves the Dundee neighborhood?

A. Yes, they each serve their own community and crisscross in every direction.

Q. Lake Alfred, is there one there or not?

A. Yes.

Q. They serve Lake Alfred?

A. Lake Alfred and Haines City and any part of the citrus belt in Polk County that is convenient.

Q. And the point you are making is that they compete with each other for the same groves?

A. Not necessarily so.

Q. For the production of the same groves?

A. There is a kind of competition, yes.

Q. And the actual neighborhood, general vicinity, location of the groves at Davenport is in the townships you fixed many years ago for service by this particular packing house?

A. You can't put the answer in my mouth, Mr. Garrett.

Q. Then, I will ask you—

A. (Interrupting). I will not say in the general vicinity; it is up to the Court to find that, and I am not going to argue that with you. If you will ask it right I will try to answer.

Q. Put it any way you want.

A. You want to know if the two townships or range is in the general vicinity of operations of the Holly Hill Fruit Products?

Q. Yes.

A. It is not.

Q. Does it go beyond the general vicinity?

A. It does in its cannery.

Q. It does in its cannery?

A. Yes, sir, it goes beyond that.

Q. You are sufficiently familiar with the Holly Hill Fruit Products Inc. to know whether they operate with more than ten employees, are you not?

Mr. Reeves:

Objected to, if the Court please, as immaterial and irrelevant.

Mr. Garrett:

I don't think it is immaterial; however, it may not be in cross.

The Court:

Objection sustained.

Mr. Garrett:

Q. Do you happen to know the general amount of the population of Davenport?

A. No, I don't know it.

Q. Would you say it is more than 300?

A. I haven't had occasion to investigate and see. You know the Court knows it is quite a small town, and the official publications of Florida and the United States Census shows that.

Q. You wouldn't be prepared to tell me it is more than 300?

A. No.

Q. Do you know whether the people that work in your place come from and live in Davenport or elsewhere?

A. I understand a considerable number of them, and particularly your clients, live in Kissimmee and Loughman and Orange County.

Q. There are not enough employees available in Davenport to operate it?

A. No, sir.

Q. (Indicating exhibit.) You didn't, yourself, draw these circles but you are assuming—

A. (Interrupting.) It was done under my instructions and direction, Mr. Garrett.

Q. And you checked them enough to be fairly well satisfied that they are correct?

A. Yes, sir, it is correct.

Q. And by road distance Haines City is well within the first 10 miles radius?

A. Yes.

Q. And by road distance Lake Hamilton is just about 10 miles?

A. Yes.

Q. That is a little community? All of this?

A. Small town.

Q. Dundee by road is about 10 miles from Davenport?

A. I believe a witness this morning fixed the distance at about 10 miles.

[Q.] A. And you have no criticism about how they fixed it?

A. No.

Q. And Lake Alfred should be, according to you, 10 miles?

A. About that; maybe a little more, maybe less.

Q. That is an incorporated town?

A. That's a fairly straight road.

Q. I say it is an incorporated town and quite a sizable community, isn't it?

A. Yes, it has some size.

Q. The thorough-fares, and roads, and highways in this locality here don't converge on any one particular one of those towns, do they?

A. No, Polk County has the best developed road system in the State of Florida, and they are built with the intention of contributing to the different communities.

Q. As a matter of fact, you don't know of any good

roads running out of, or around, or thrugh Davenport except the main highway Route 17, do you?

A. Oh, there are several such roads and bridges in that community.

Q. Are they paved?

A. Yes, sir.

Q. In what community do you mean?

A. Davenport.

Q. What general limitation or genera do you put around that word "community"?

A. I think—

Q. (Interrupting.) You wouldn't include Haines City, would you?

A. Yes, sir.

Q. As part of Davenport?

A. Yes, sir.

Q. Lake Alfred is for the purposes of handling fruit economically and satisfactorily and in accordance with the law?

A. Yes.

Q. And for the purposes of entertainment?

A. It is very convenient; you can go to a picture show there in a few minutes.

Q. Does Davenport have a picture show?

A. I am not sure.

Q. It is a complete community with a drug store and other things?

A. It has a piece of a drug store.

Q. Is it incorporated?

A. Yes, sir, I incorporated it.

Q. It is well incorporated?

A. Yes, sir, it is fixed right.

Q. When this amendment was made to the charter of Holly Hill Fruit Products, Inc., was that the time Mr. Di Cristini took over?

A. He has been with the company since 1929 but not the general manager. He was there as sales manager when Mr. Christ was general manager and upon his death Mr. Di Cristini succeeded him.

Q. This red on the map indicates a great many pages or red all of which are groves?

A. Yes, sir.

Q. It, also, shows a lot of white, that is, also, groves?

A. There are, probably, twice as many groves indicates in red.

Q. What happens to the produce from those groves?

A. Well, the cannery handled a large part of the grapefruit.

Q. Does the cannery only handle grapefruit?

A. Only grapefruit except cannery juiced oranges. We don't process any oranges by packing—

Q. (Interrupting.) Show me, if you will, how those townships divide up? On this one?

A. (Indicating.)

Q. Lake Hamilton is outside the two townships?

A. Yes, sir, Lake Hamilton, Township 28.

Q. And Dundee is outside the two Townships?

A. It is.

Q. And Lake Alfred is outside the two Townships?

A. It is.

Q. What is the reason for the stopping of the groves of the owner-co-operative owners of the Holly Hill Fruit Products, Inc. at this point north of Section 19 and at the point beginning with Section 20 of that top Township? Is that the end of the development?

A. That happened to be the extent of the development of that part of the County in groves by Holly Hill Fruit Products, Inc., and it wasn't intended to limit the benefits of the corporation, and if it had been 10 or 15 miles away the construction would have been made the same way;

so far as the co-operative is concerned, it is a family affair that the owners took pride in.

Q. You are using the word "family" in a generalized sense? You don't mean that they are related do you?

A. Not at all.

Q. You mean related in affairs?

A. They are all friendly in that sense; they call themselves a big family group of Holly Hill owners.

Q. Is this Holly Hill Fruit Products, Inc. operating a packing plant, too?

A. The packing house consists of packing house machinery on one end and with all machinery for the operations and processing of fruits for fresh marketing, and half of the north end is a cannery.

Q. Is the cannery owned by this corporation?

A. By the same corporation; owned and operated by Holly Hill, Inc.

Q. There is no distinction in departments? It is one, solid corporation?

A. No separate entity.

Q. They simply used the cannery at one end?

A. Yes.

Q. And the same limitations as to ownership and territory abide with reference to the packing company as with reference to the Cannery?

A. There is no separate relationship or existence of the cannery from the packing house; they are one single unit.

Q. And the owners who use your packing house are limited to the same two townships as the owners who sell fruit to the cannery?

A. There is no limitation; there is no limitation on the operation of Holly Hill, Inc. I don't believe you understand the principle of a co-operative Association. This Association can do business with or up to 50 per cent. of its total capactiy, but those people can't own stock in the corporation. The ownership of stock is limited to people

who have been bearing citrus groves and are patrons of the company, and that is the theory of the co-operative system.

Mr. Garrett:
That's all.

(Witness excused.)

129 WILLIAM P. HICKMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Reeves:

Q. State your name for the record, please, sir.

A. William P. Hickman.

Q. What official position do you hold, if any, with the defendant, Holly Hill Fruit Products, Inc.?

A. I am Treasurer and Chief Accountant.

Q. How long have you been with that company?

A. Since June, 1932.

Q. Did you, at the request of counsel for the company, attempt to get up all of the information available as to where the fruit used by the cannery in the seasons '38-'39 and '39-'40 was produced?

A. Yes, sir.

Q. What did you do in accumulating that data, Mr. Hickman? How did you go about it?

A. We got the records of the company, and, particularly the Grapefruit Distributors, and attempted to run down each one of the names that appeared on the books as people from whom we had purchased fruit; we attempted to find them, and we sent out questionnaires telling them

what we wanted. We wanted to know where the fruit came from—what grove the fruit came from that they sold to us, and we asked them to send back this information on the questionnaire that we sent out.

Q. I hand you a mimeographed paper (handing paper to witness). Is this one of the mimeographed copies that you used in trying to get this information?

A. Yes, sir.

Q. The rest are just like that (indicating) except they have the name of the party to whom they were sent and the description of the fruit?

A. Yes, sir.

Mr. Reeves:

We offer the paper in evidence as a sample of the copy.

Mr. Garrett:

No objection.

The Court:

Let it be admitted.

. . . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. E.

Mr. Reeves:

Q. In addition to sending out those questionnaires, what, if anything, did you do?

A. Some of them did not come back and Colonel Huffaker went to some towns and I went to some towns and tried to find them. I talked to some of them and they told me about where the fruit came from—some of them that testified here today.

Q. Let us start off this way, Mr. Hickman. I understand from the testimony that a cannery is operated by the defendant, Holly Hill Fruit Products, Inc.?

A. Yes, sir.

Q. The same as the fresh fruit end of the business? Is that correct?

A. Yes, sir.

Q. This suit is on behalf of certain people who claim they are entitled to money under the Wage & Hour Law. Have you checked to determine whether those people are or claim to have been employees of the cannery?

A. Yes, sir, they are all employees of the cannery.

Q. With reference to the cannery, do you have or did you have at that time complete records as to where fruit was produced when the fruit was received by the company?

A. No, at the time the fruit came in, we didn't have any record.

Q. So that in preparing for this case it was impossible for you to go to your records and determine where fruit came from?

A. That's correct.

Q. As I understand it, you sent out these questionnaires and interviewed the people. Did anybody else in the organization help you in doing that?

A. Mr. Di Cristini called some and Colonel Huffaker called some, and I went out and tried to find some.

Q. At our request did you get up a statement showing the total number of boxes of fruit used by the cannery during the two seasons involved in this case? (handing paper to witness).

A. Yes, sir.

Mr. Reeves:

We offer in evidence the paper just identified by the witness, a copy of which we have furnished to counsel.

Mr. Garrett:

As evidence of what they did, I have no objection, but as to whether it is true or not depends on the sources of

information which he has already indicated were of the vaguest kind.

The Court:

Is this a statement of the number of boxes actually used?

Mr. Reeves:

There is a lot of information on it, your Honor.

The Court:

All right.

. . . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. F.

Mr. Reeves:

Q. In connection with that, did you, also, Mr. Hickman, get up a statement for each of the seasons involved showing, to the best of your information and belief, where said fruit came from?

A. Yes, sir. (Handing papers to counsel.)

Q. And are those two papers which you now hand me the ones you prepared or had prepared under your supervision?

A. Yes, sir.

Mr. Reeves:

We offer in evidence those two papers and ask that they be marked Defendant's Exhibits Nos. G and H.

Mr. Garrett:

Q. I assume the sources of your information are those which you have already told counsel?

A. Partly records and partly the sources of information that I have mentioned.

Mr. Garrett:

We interpose the same objection; we can't accept those as representing the truth. We think they should be filed without question, but how much weight we will give them will depend on how well authenticated they are.

The Court:

All right, admitted for that purpose.

. . . . Thereupon, the documents last referred to were admitted in evidence and marked Defendant's Exhibits Nos. G and H.

. . . . Thereupon, a discussion was had off the record.

Mr. Reeves:

Q. Now, Mr. Hickman, let us get one or two things straight. Let's talk about your Exhibit No. F, which is the compilation. You have got a column headed "Boxes 1938-1939 Season", and then on the left you have the total, combined volume, packing house and cannery, 702,160. As I understand it, that means the total number of boxes used in the cannery and packing house that year?

A. That's correct.

Q. And you have under that deducted fresh fruit packing house volume, 383,618. As I understand it, you deducted from that what went through the fresh fruit part of it so that you have left, to-wit: 318,542, and that represents the number of boxes that went through the cannery that year, isn't that correct?

A. That's correct.

Q. You have following that, under that, Holly Hill Groves Cannery Fruit, 258,857, does that mean that that fruit all came from the grove marked in red on Exhibit No. D?

A. That's all the fruit that came through on pools; we might have handled others as Colonel Huffaker pointed

out. These are our member groves; they are people that own stock. We might handle your grove but if you didn't own stock, and, as said, it wouldn't necessarily be on there.

Q. Have you brought here today your original records as to the fruit that went into those pools?

A. Yes, sir.

Q. That is on the tables and is rather voluminous (indicating)?

A. Yes, sir.

Mr. Reeves:

It is subject to counsel's inspection if they want to see it.

Mr. Garrett:

All right, unless we decide after cross examination.

The Court:

What is this (indicating)?

A. That means all of the fruit handled through the Holly Hill pools that wasn't purchased by Grapefruit Distributors.

The Court:

It is not confined to the members?

A. Not necessarily; no.

Mr. Reeves:

Q. Now, following that you have an item Grapefruit Distributors, Inc., purchases, 59,685. As I understand it, what you did is you took all of the fruit that went in the canning plant and you divided that two ways. First, all that went through pools, and, second, all that came from Grapefruit Distributors, Inc. Is that correct?

A. Correct.

Q. Let's take Grapefruit Distributors, Inc. for that year —it shows 59,685. That's the total number of boxes that came from Grapefruit Distributors that year?

A. Yes, sir.

Q. Now, as I understand it, you have an analysis of the fruit that came from Grapefruit Distributors. That's correct?

A. Yes, sir.

Q. Now, under the column headed "Boxes 1938-1939 Season" you have certain figures, and over to the left you have "within 10 miles", 15, 20, 25, over 25 and unknown. Have you placed here the figures as to the total number of boxes that fall into all of those categories according to your investigation and your best knowledge and belief?

A. Yes, sir, according to that map that Colonel Huffaker had.

Q. Now, one other figure we ought to explain here—total dumps and rots and so forth—633, what does that mean?

A. Grapefruit Distributors bought this fruit and Holly Hill credited it on its pool, and in the meantime 633 boxes in the canning process rotted and Grapefruit Distributors, Inc. didn't get credit for this 633 boxes.

Q. Let us leave that a minute and take up Exhibit No. H, which is the 1938-1939 season. As I understand it working this with Exhibit No. F you show a breakdown of those figures contained in the analysis part of the statement just referred to, don't you?

A. Yes, sir.

Q. Now, you have some dates on the left hand column, what are those dates?

A. That is the date of our check.

Q. Does that necessarily mean you bought the fruit that day? On that date?

A. No, sir, that is the day we made our check and gave it to him.

Q. The next column is headed "Name". Is that the name of the purchaser or the owner of the grove or what?

A. That's the party that got the money.

Q. Then, you have the number of boxes. That is the number of boxes including that check?

A. Yes, sir.

Q. Then, you have location of groves. Have you shown the location of those groves where you knew them and where you could find out where they were through the methods you have testified about by sending out a questionnaire, making an investigation, talking with other people in the organization?

A. Yes, sir.

Q. Some of those are blank. Does that mean you were unable to definitely locate the groves from which that fruit came?

A. Yes, sir.

Q. In those instances where you could not definitely locate the groves where did you show that fruit in reference to the number of miles from the canning plant?

A. There is a column that says "distance unknown" and we put those boxes in there.

Q. To the far right?

A. To the far right.

Q. Next is the variety of citrus purchased, which speaks for itself, and then you have columns "within 10 miles", 15 miles and so forth. Under that you put the number of boxes that came from different groves at that distance, as I understand it?

A. Yes, sir.

Q. Where, for intance, you have 20 miles, does that mean, Mr. Hickman, that you estimated that as road miles or under the radius shown on the map introduced in evidence?

A. We used this map and used those circles.

Q. That doesn't mean the road miles?

A. No, sir.

Q. You didn't attempt to do that?

A. No, sir.

Q. Now, with reference to Defendant's Exhibit No. G. This I understand is the same as we have just covered except it is for the 1939-1940 season?

A. Yes, sir.

Q. After you had accumulated this information 1938-1939, Exhibit No. F, did you, likewise, by the same information compute this for the season 1939-1940?

A. Yes, sir.

Q. I notice you have by each season a column headed per cent 1938-1939 season and some figures under that. Where did you get those from?

A. Well, we used the total volume that went through the canning plant as 100 per cent. and then we applied 318,542 to the other figures to find out the percentage that went through the canning plant—81.26 per cent. and the grapefruit brought in there 18.74, and down at the bottom we further broke down that 18.74 into the various percentages within 10. 15, 20, 25 and so on, and that was done for both years, I think, on the same basis.

Q. What percentage of the Grapefruit Distributors' fruit was produced within 10 miles of the packing plant or canning plant during the season 1938-1939?

A. 15.98 per cent.

Q. Have you figured the percentage of fruit used by the cannery during the 1938-1939 season that was produced within a distance of 10 miles from the plant?

A. Yes, sir.

Q. How much was that?

A. 97.24.

Q. In other words, 97.24 per cent of the fruit used in the cannery that year came from within 10 miles?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, you don't have set out on this report, as I understand it, the per cent. of the total fruit that was obtained within 15 miles?

A. Yes, there is the total fruit obtain within 15 miles right here (indicating).

Q. But you don't have that figure in per cent., do you?

A. Yes, sir, .46 per cent was the per cent. based on the total volume of the canning.

Q. What percent. of the fruit used in the canning plant during the season '38-'39 was produced more than 10 miles from the and less than 15 miles?

A. .46 per cent.

Q. What per cent. of the fruit used in the canning plant for the season 1938-1939 was produced more than 15 miles from the plant and less than 20 miles?

A. None.

Q. What per cent. of the fruit used by the canning plant in the season 1938-1939 was produced more than 20 miles and not less than 25 miles from the plant?

A. 1.53 per cent.

Q. What per cent. of the fruit used by the canning plant during the 1938-1939 season was produced over 25 miles from the plant?

A. None.

Q. You have heretofore testified about some of the fruit that came from groves and that you did not know where they were located. In other words, you did not know which groves they were, and you have testified that you carried those out as "unknown". What per cent. of the fruit used by the cannery during 1938-1939 season came from groves of which you have not obtained sufficient information to put them into any category?

A. .96 per cent.

. . . . Thereupon, a discussion was had off the record.

Mr. Reeves:

Q. Mr. Hickman, you show here a total of 258,857 boxes or 81.26 per cent. of the fruit used in 1938-1939 season under the heading Holly Hill Groves Cannery Fruit, do you know from what distance that fruit was obtained?

A. Within 10 miles.

Q. Within 10 miles?

A. Yes, sir.

Q. You have testified, I believe, that .96 per cent. of the fruit you were unable to find out where it came from?

A. Yes, sir, I did.

Q. Do you have any reason to believe that that fruit came from over 25 miles or less than 25 miles?

A. We couldn't find the people, and I don't know.

Q. You just don't know?

A. No.

Q. If this same percentage holds true—in other words, if 97.24 per cent. of all the fruit you could find came from within 10 miles, and that same per cent. held good for the stuff you don't know about, there is only a very small part of that item that would fall over 10 miles?

A. Yes, sir.

Q. For the season 1939-1940 what percentage of the fruit used by the cannery came from within 10 miles?

A. 91.39 per cent.

Q. What per cent. within 15?

A. .69 per cent.

Q. What per cent. within 20 miles?

A. None.

Q. 25?

A. 3.09 per cent.

Q. What per cent. within or over 25 miles? Over 25 miles?

A. None.

Q. And what per cent. came from groves that you were unable to locate?

A. 4.86 per cent.

Q. It, also, shows for that season 70.91 per cent. Holly Hill Groves Cannery Fruit. Do you know what distance that fruit came from?

A. It is pool fruit within 10 miles.

Q. It has been testified in this case that these groves marked in red on Defendant's Exhibit No. D are groves of members, is that correct?

A. Yes, sir.

Q. Likewise, I believe Mr. Huffaker pointed out that there were many other groves in that section?

A. Yes, sir.

Q. Does the cannery get fruit from those other groves?

A. Yes, sir.

Q. When you talk about this Holly Hill Cannery Fruit coming from within 10 miles, it is possible it came from around those particular groves there (indicating)?

A. Yes, sir, we have less than half of the groves there; that is why we call them Holly Hill Groves—they have—that's what they are generally known by.

Q. Mr. Hickman, does the Holly Hill Fruit Products, Inc., own trucks or do its own hauling?

A. It owns 12 or 13 trucks. Yes, sir.

Q. Do you know the number of acres that are shown in red on Defendant's Exhibit No. D or approximately the number?

A. I have it in an audit report—between 2,300 and 2,400 acres.

Q. You can look it up later and if you are in error you can let us know.

A. Yes, sir.

Q. The fruit that is hauled by the defendant, is that fruit bought outright, or is that fruit received from members, or fruit put in the pool, or what is that?

A. As a general rule the Holly Hill company trucks hauls the members fruit, and any of these outside people we have been talking about their fruit is hauled by so-called bird dogs, or the grower themselves.

Your records show where you mailed the checks to these people shown on Exhibits G and H?

A. Yes, sir, it does.

Q. Does that necessarily mean that those groves were there at all?

A. Not in my opinion.

Q. As a matter of fact, a man might live in the north and own a grove down here and you send him a check up in the north?

A. Yes, sir.

Q. So far as the records are concerned, the fact that it shows where you mailed the check to that doesn't mean where the grove was?

A. No, sir.

Q. In order for you to determine the location of those groves you had to talk with the people from whom you obtained the fruit, and to the members of your organization, and make inquiries and investigations, and this is the result—what you have here today?

A. Yes, sir.

Q. In your opinion, Mr. Hickman, is that true and correct?

A. Yes, sir.

Q. How far is your plant from the groves, Mr. Hickman?

A. From the groves?

Q. From any groves?

A. There are groves within a block of it; town lots.

Q. Very many groves, or just one?

A. You know the town at one time was all grove, some have been neglected and abandoned, but there are 50 or 60 acres in the town limits that we take care of.

Q. Is the plant within the town limits?

A. Yes, sir.

Q. As a matter of fact, there are many groves right around the plant? Groves on every side?

A. Yes, sir.

Q. It is a fact, is it not, that fruit is grown commercially all around your plant?

A. Absolutely.

Q. You are right in the area where fruit is produced commercially?

A. Right in the middle of that development.

Q. As I understand it, that is in Polk County?

A. Yes, sir.

Q. It is one of the largest citrus producing counties in the State?

A. I understand it produced the bulk of the fruit.

Mr. Reeves:

That's all.

The Court:

We will take a few minutes recess.

(After recess.)

. . . . Thereupon, the witness, William P. Hickman, resumed the stand for further direct examination.

By Mr. Reeves:

Q. Mr. Hickman, I asked you about how many groves were shown in red on Defendant's Exhibit No. B, and you told me, according to your information, you had those figures. Have you checked those figures?

A. At the end of June 30th, 1939, 1,997.48 acres, and June 30th, 1938, 1,968.75 acres.

Q. One other thing, Mr. Hickman, I hand you herewith a Standard Oil Company Road Map (handing paper to witness), Florida, 1935, and I ask you has that been circled similar to that other map?

A. According to the scale of the map.

Q. To what extent was that circled?

A. Radius within 10 miles, 15 miles, 20 miles, 25 miles, and, I think, this was 50 miles; that's the extent of it.

Mr. Reeves:
We offer the map in evidence.

Mr. Garrett:
No objection.

The Court:
Let it be marked.

. . . . Thereupon, the document last referred to was admitted in evidence and marked Defendant's Exhibit No. I.

Mr. Reeves:
That's all.

Cross Examination.

By Mr. Garrett:

Q. You are the Treasurer of Grapefruits Distributors, Inc.?

A. Yes, sir.

Q. And Mr. Di Cristini is the Manager?

A. He is the President of Grapefruit Distributors.

Q. And you are the Treasurer of Holly Hill Fruit Products Inc.?

A. Yes, sir.

Q. And he is the President of that?

A. No, he is Vice President and General Manager.

Q. They operate in conjunction with each other, do they?

A. No, they are separate corporations.

Q. Does Grapefruit Distributors, Inc. sell any fruit to anybody but Holly Hill Fruit Products, Inc.?

A. They have; they used to export fruit to Britain.

Q. I am talking about this period we are interested in?

A. To the best of my knowledge, they sold only to Holly Hill Fruit Products.

Q. What is that? A stock company—Grapefruit Distributors, Inc.?

A. Grapefruit Distributors, Inc., I believe, is a Florida Corporation.

Q. A stock company for profit?

A. Yes, sir.

Q. Do you happen to know the stockholders?

A. Yes, sir.

Q. Who are they?

A. Mr. Di Cristini, myself and Miss Howe.

Q. Who is she?

A. She is Secretary.

Q. And the profit that company makes is distributed between the three of you?

A. Well, it is held in the corporation's treasury according to the Board of Directors of that corporation—

Q. (Interrupting.) And the three of you are the Board?

A. (Continuing.) —if they should decide to distribute it that way.

Q. There is no limitation of 8 per cent. on their profit?

A. So far as I know, no limitation.

Q. What position does Miss Howe have with the Holly Hill Fruit Products, Inc.?

A. She is Secretary.

Q. She owns stock in it?

A. I believe she does.

Q. Do you?

A. Yes, sir.

Q. And Mr. Di Cristini?

A. Yes, sir.

Q. Do all of you own groves?

A. They own bearing groves, and I have got a promise of a grove.

Q. And all within the two townships?

A. Yes, sir.

Q. All of those members of the Holly Hill Fruit Products, Inc. are supposed to profit alike and fare alike, is that right?

A. The profits of Holly Hill, Inc. are divided according to the boxes of contribution of the members. Yes, sir.

Q. And this is a little side issue of you three officers?

A. Well, we are the company.

Q. And you have all three been such officers since January 1st, 1938?

A. I am trying to remember; I would like to look that up. I don't remember when I became an officer.

Q. About that?

A. Well—

Q. (Interrupting.) You can check and see and put it in the record when you find out.

A. All right.

Q. The three of you are the directors of it?

A. Yes, sir.

Q. And it has been going on since when?

A. Well, it has been going on since I came to the Holly Hill Fruit Products, Inc. in 1932; it was operated before that time.

Q. What is its purpose? To help furnish volume for Holly Hill Fruit Products, Inc.?

A. The purpose of Grapefruit Distributors was originally to export fruit, and, as you know, the export market isn't very active now. During these seasons you are speak-

ing about it was used to keep the cannery in operation in order to enable us to obtain sufficient volume of fruit to keep the cannery going and fill our commitments.

Q. But it furnished the money of itself for the fruit that was bought?

A. Yes, sir.

Q. It didn't come from Holly Hill Fruit Products, Inc.?

A. Yes, sir.

Q. It bought on its own account and sold on its own account?

A. Yes, sir.

Q. And it sold only to Holly Hill Fruit Products, Inc.?

A. It bought and sold from these individuals you have been examining and put its fruit in the pool, in the Holly Hill, Inc. pool, and got exactly the same price as the patrons, and participated on the same basis as the rest of the patrons.

Q. You were asked if these parties-plaintiff included those that are listed as represented by the three parties were checked over by you on the books and found to be employees of the cannery.

A. Yes, sir.

Q. You found that to be such?

A. Yes, sir.

Q. During those two seasons?

A. Yes, sir.

Q. When I am referring to the cannery, I mean Holly Hill Fruit Products, Inc's. cannery.

A. I guess you do.

Q. Well, do you mean that?

A. Yes, sir.

Q. And since there are some 192 or more of these plaintiffs, the cannery in each of its seasons employed more than seven or over ten employees?

Mr. Reeves:
Objected to as immaterial and irrelevant.

The Court:
Objection overruled; we will have it in the record.

The Witness:
They had how many?

Mr. Garrett:
Q. Over seven or over ten in their employ?
A. Yes, sir.
Q. About how many did they have each year?

Mr. Reeves:
Same objection. Objected to as immaterial and irrelevant.

The Court:
Objection overruled.

The Witness:
I don't know definitely the total volume of the whole packing house, but it will run between three and four and it has run as high as 500 people, but this season—
Q. You would say over 100 for each season?
A. Yes, sir, I would.

Mr. Reeves:
The same objection to the last question, and we move to strike the answer on the same grounds. Objected to as immaterial and irrelevant.

The Court:
Motion denied.

Mr. Garrett:

Q. I am not trying to confuse you, Mr. Hickman, but you did not tell Mr. Reeves that Grapefruit Distributors, Inc. did not go through the pool, did you? As a matter of fact, it did not go through the pool?

A. It did, yes, sir.

The Court:

For canning purposes, too?

The Witness:

Holly Hill, Inc. doesn't buy any fruit; it delivers it on a pool basis. Grapefruit Distributors obtained fruit, put it in the pool, and shares in the same manner as every other participating patron.

The Court:

Do you take it for canning?

The Witness:

Grapefruit Distributors don't buy fruit other than for canning.

Mr. Garrett:

Q. It didn't buy any except for grapefruit?

A. I think Colonel Huffaker testified that way; I think they bought both oranges and grapefruit.

Q. Do they can both?

A. Yes, sir.

Q. At that place?

A. I believe we have canned a small amount of oranges sections, but the volume is grapefruit sections.

Q. What is this canned fruit? Is it juice or segments?

A. It is both.

Q. Do you make grapefruit juice in cans and grapefruit cut into sections?

A. We have two departments—a sectionizing department which makes segments, and a juice department, orange juice and grapefruit juice and combinations.

Q. Are you familiar with the operations of the canning plant?

A. Fairly so.

Q. Just explain the operations for us so that we will get it clearer in the record. After the fruit comes to the cannery the first thing that is done is to unload it?

A. Yes, sir.

Q. Is it next sized?

A. Yes, sir.

Q. Next graded?

A. Well, it might be graded before it is sized.

Q. Either one or the other?

A. Yes, sir.

Q. Is it steamed in order to peel it?

A. The sectionized fruit is the juiced fruit, isn't it?

Q. Sectionized fruit is the only one that is peeled?

A. Yes, sir.

Q. Otherwise, you squeeze the fruit and get the juice out?

A. It is a machine operation.

Q. But as to sectionized fruit—after it is peeled it is sectionized?

A. Yes, sir, peeled by the peelers and then it goes to the lye peeling machine.

Q. They cut it into segments to be used in the cans?

A. Yes, sir.

Q. They cut it into segments to be used in the cans?

A. Yes, sir.

Q. And then it is canned, is that right?

A. That's right.

Q. Then, in the canning do you add a preservative?

A. There is sugar added.

Q. Is there any cooking?

A. After the can is closed.

Q. Then, you put them in the can and cap the can?

A. The can is closed and then it goes to a long steam cooker.

Q. The sectionizer puts them in the can?

A. Puts the segments in the cans.

Q. And then it goes to a can closing machine which caps it?

A. Yes, sir.

Q. And then it is steamed?

A. Yes, sir.

Q. And in between there there is some sugar put in?

A. I don't remember whether we put the sugar in before or after. I don't know whether it is before or after, but anyway it gets in.

Q. Is it then steamed after that?

A. Yes, sir.

Q. And then it is sent out when an order comes in?

A. Yes, sir.

Q. That's the process, isn't it?

A. Yes, sir.

Q. What did you say about the juice? Does it have a preservative or sugar?

A. I have never heard of a preservative; some of it is unsweetened.

Q. Now, you have referred continually in your direct testimony to distances. Those are all air distances on the basis of these concentric circles on the map?

A. Yes, sir, we made no effort to figure road distances.

Q. All of your fruit comes to you by road?

A. Yes, sir.

Q. Practically all of it is hauled there in trucks?

A. Yes, sir.

Q. What was this you were telling Mr. Reeves about? That you had about 14 trucks of your own?

A. I think that's how many we have now.

Q. And you use them for what?

A. Hauling fruit to the packing house, taking fertilizer to the groves, and spraying.

Q. What fruit do you haul to the cannery in trucks?

A. The fruit from member groves in the Holly Hill Corporation.

Q. You don't have anything to do with the hauling of Grapefruit Distributors, Inc's. fruit?

A. We may in an isolated instance, but as a general rule it is handled by outside helpers.

Q. In that isolated instance do you charge up the cost of that truck to Grapefruit Distributors, Inc.?

A. We did; it might be done once or twice, but it is practically never done.

Q. Did you say that the fruit that comes from Grapefruit Distributors, Inc.'s source is brought in there in the trucks of Grapefruit Distributors, Inc.?

A. No, Grapefruit Distributors, Inc. doesn't own any trucks.

Q. How does it get there?

A. These bird dogs.

Q. Do you mean like B. C. Cook?

A. Yes, sir.

Q. By that you mean they smell out a bargain?

A. Yes, sir, I guess so.

Q. They buy cannery fruit and bring it to you and sell it to Grapefruit Distributors, Inc.?

A. That's correct.

Q. Do you tell them what you will pay for it before they go out and buy it?

A. You will have to ask Mr. Di Cristini; about all I know is what we pay for it.

Q. You have been quite frank in stating that in order to answer these questions that counsel for defendant has asked you with reference to the location of groves, that you have had to get every manner and source of informa-

tion you could, and it is not, of course, first hand knowledge. Is that correct?

A. Yes, sir, I know some of the groves and some of them I don't.

Q. Nevertheless, basing it on knowledge you got from hither and yon, you made up these percentages?

A. Yes, sir.

Q. And if that knowledge is faulty then the percentages are false, is that correct?

A. That would be so.

Q. And the witness, Mr. Weatherford, he is listed time after time after time—John Weatherford, 292, John Weatherford, 133, John Weatherford, 557, John Weatherford, 277, John Weatherford, 82, John Weatherford, 622, and so forth. When you put the location of his grove and undertake to determine within 10 miles—you have to depend on him to tell you where you got that fruit?

A. He told Mr. Di Cristini that all grapefruit came from one place and the oranges from another.

Q. You heard him testify this morning, did you not?

A. I don't remember exactly what he said.

Q. Do you remember that he didn't know where he got it from?

A. These figures were made up before these people testified and we had to put them down.

Q. I am not criticizing your honesty, I am asking you if you relied on John Weatherford to tell you?

A. Yes, sir.

Q. And when he says he don't know, you don't know?

A. I put it down like he said.

Q. You don't know any more than what he told you?

A. I don't know as much.

Q. And that's also true about Cook—Cook, 4,383, Cook, 418, Cook, 324? You remember Mr. B. C. Cook unfortunately lost his records and he couldn't tell you where they came from, but he did make a guess within some radius, and that's all you can rely—

Mr. Reeves: (Interrupting):

Objected to as being an erroneous statement of the testimony of the witness.

The Court:

The record, of course, will show.

Mr. Garrett:

Q. Didn't you have to rely on Mr. Cook for your information?

A. Not entirely in the case of Cook because I know where he lives, and I see his trucks in the groves all of the time. We did rely on his information; he told us where the fruit came from, but we, also, have seen him picking fruit.

Q. But you don't remember about any particular season? '38-'39 or '39-'40?

A. No, I don't.

Q. You had to rely on him?

A. Yes, sir.

Q. There is a considerable portion of this fruit that comes from those two sources alone—Weatherford and Cook, isn't there?

A. Yes, sir.

Q. And it would upset those percentages considerably if we had to upset them with reference to those two people, would't it?

A. I would have to work that out.

Q. Now, then, throughout your discussion with Mr. Reeves as to percentages, you have been dealing with the proposition of percentages of all of the fruit handled by the cannery, is that correct?

A. All fruit handled by the cannery.

Q. And actually if we look at this exhibit you furnished, and we assume these figures to be correct (counsel referring to Defendant's Exhibit No. F), we find that 81

per cent. came from the member groves and 18 per cent., I am talking about the season of '38-'39,—almost 19 per cent. came from Grapefruit Distributors, Inc.

A. Right.

Q. If you applied your percentages not to the entire 100 per cent. but the amount received from Grapefruit Distributors there would be a tremendous difference, wouldn't there?

A. Yes, sir, but we are talking about the whole cannery.

Q. On the 100 per cent. basis of the whole cannery?

A. Yes, sir.

Q. And, therefore, these small per cents. for distances would be much larger per cents. of Grapefruit Distributors, Inc.—

A. (Interrupting.) Obviously.

Q. (Continuing.) —because practically all of your member groves are within the neighborhood or general vicinity or immediate locality of your cannery, is that correct?

A. Within ten miles, yes, sir.

Q. Talking always about air miles?

A. Yes, sir.

Q. What benefit, if any, did the members of your Holly Hill Fruit Products, Inc., get from the operation of Grapefruit Distributors, Inc.?

Mr. Reeves:

Objected to as being wholly immaterial and irrelevant.

Mr. Garrett:

I think it is early to determine that. When we come to discuss what the proper definition is of area of production we will have to consider whether or not this is entirely co-operative or whether or not it is purely speculative and a profit business, but I think I have a right to

determine whether this is a part of their co-operative service—this Grapefruit Distributors, Inc., or whether it is private speculation.

Mr. Reeves:

If your Honor please, he filed suit on behalf of people as employees of a co-operative, and if the co-operative obtained fruit from somebody else, a separate and distinct corporation, it doesn't make any difference what these people did—whether they are entitled to have the Wage and Hour Law apply to them or not. I can't conceive of any theory being advanced by Mr. Garrett that it makes any difference—it wouldn't make any difference whether the employer was independent or a co-operative; that isn't part of the definition at all.

. . . . Thereupon, a discussion was had off the record.

The Court:

I think we ought to get the testimony in the record, and you can make a motion to strike it out later. Objection overruled at this time.

The Witness:

What is the question.

The Court:

Read the question.

(Question read.)

The Witness:

For one thing, they were enabled to get a larger volume of fruit and to cut down the cost—the cost of packing, and the cost of canning, and the stockholders of Holly Hill, Inc. benefit by the operation of Grapefruit Distributors be-

cause it enabled the company to operate, to get fruit at the time it was needed and to fill its commitments with its customers which would have been canceled and lost if they hadn't been able to get that fruit.

Q. One of the things was it enabled them to reduce the costs of operation?

A. Yes, sir, by volume operation; if you couldn't have gotten your number of days of operation—your number of working days would be cut down by that amount.

Q. What is the percentage involved in the total cost of operations in the payment of wages?

A. I couldn't answer that right off.

Q. Do you hire the help from day to day?

A. I guess you would call it day to day.

Q. If you are not running you are not paying them?

A. Yes, sir.

Q. Does Holly Hill Fruit Products, Inc. furnish money to Grapefruit Distributors, Inc. to purchase fruit?

Mr. Reeves:

Same objection.

The Court:

He has answered that.

The Witness:

He asked me once did Grapefruit Distributors use its own money. It has capital. Yes.

Mr. Garrett:

Q. You have answered that question that it doesn't furnish money to them, is that correct?

A. Holly Hill, Inc. has loaned money, but they have money of their own.

Q. It finances the Grapefruit Distributors, Inc.?

A. Not necessarily; no, sir. It has loaned them money.

Q. It does that constantly?

A. Yes, I guess it does.

Q. That is the money that is used to buy fruit with?

A. Partly that.

Q. Does Grapefruit Distributors, Inc. use any money other than what it borrows from Holly Hill Fruit Products, Inc.?

A. Yes, they have money of their own.

Q. That they borrow from somewhere else?

A. It belongs to them.

Q. How much fruit is from non-stockholders in your figure of 258,857 boxes for the 1938-1939 season?

A. (Referring to paper.) I couldn't answer that; you will have to analyze the records to find out.

Q. A small amount or large amount?

A. A very small amount.

Q. How much went into the figures for the 1939-1940 season?

A. I don't know but my impression is a very small amount.

Mr. Garrett:

That's all.

(Witness excused.)

Mr. Reeves:

If your Honor please, with the permission of opposing counsel, I would like to read into the record the populations of some of the towns referred to in the testimony, according to the 1930 and 1940 Federal Census. (Reading):

Town	1930	1940
Auburndale	1,849	2,723
Haines City	3,037	3,890
Loughman	806	406

Davenport	650	640
Lake Alfred	629	920
Lake Hamilton	399	344
Dundee	615	694
Babson Park	702	798
Lakeland	18,554	22,068
Lake Wales	3,401	5,024

The census which we have before us does not show Lucerne Park, and it appears from this that Loughman is not incorporated because it gives the precinct, and the figures for Babson Park is for the entire precinct.

Now, if your Honor please, I think we are about finished with this particular phase of the case, but we have some other witnesses who have come in this afternoon and if agreeable to the Court and opposing counsel, we would like, at this time, to adjourn until tomorrow morning so that we will be prepared to go ahead in the morning.

Mr. Garrett:

What do you propose to prove. I am wondering if you have not enough in here to enable us to go ahead with argument.

. . . . Thereupon, a discussion was had off the record.

Mr. Garrett:

In substitution for proof and in order to proceed without the taking of testimony on that feature, counsel for plaintiffs will admit the facts set forth in Paragraph 3 of the 5th defense as amended.

Mr. Reeves:

If your Honor please, if you will look at the bottom of Page 8 beginning of Paragraph 7, the defendant contends that the definition of area of production is void

and of no effect for a long number of reasons set forth at Pages 9, 10 and 11, and without evidence to support those reasons we are at a loss. We can't argue those to the Court unless we have evidence to support them. Of course, if Mr. Garrett is willing to acknowledge those facts are true upon which they are predicated, why, we will be delighted. However, I don't see how in the world we can be cut off from that part of our defense merely because he admits the facts set forth in another paragraph.

. . . . Thereupon, a discussion was had off the record.

Mr. Garrett:

In order to avoid the necessity of taking further testimony the plaintiffs admit the facts set forth in sub-paragraph 3 of the 5th Defense, as amended, and that part of Paragraph 8 of the 5th Defense, as amended, which begins, "That there is produced within a radius of 10 miles . . .", and concludes with the word "establishment".

The Court:

I think it is senseless to bring an array of witnesses in here to testify to something that has been admitted. I don't think we should take testimony on what has been admitted. However, we will let it go until 9:30 tomorrow morning.

. . . . Thereupon, the Court recessed.

. . . . Whereupon, at 9:30 o'clock in the forenoon, Thursday, December 3rd, 1942, in the United States District Court Room, Federal Building, Orlando, Florida, trial of the above entitled case resumed before the Hon. William J. Barker, Judge of the above styled Court, there being present the same appearances, and the following proceedings were had, done, and entered of record, to-wit:

Mr. Reeves:

If the Court please, we are ready to accept. We will accept that suggestion and we will not offer any more testimony in support of this 5th Defense.

Stipulation.

It is stipulated by and between counsel for the respective parties that the facts alleged in the 3rd Paragraph of the 5th Defense, as amended, filed by the defendant, are admitted to be true and may be considered as the facts in this case as if otherwise proven.

In addition to the facts alleged in Paragraph 3, the plaintiffs likewise admits as true the allegation in Paragraph 8 as follows:

"That there is produced within a radius of 10 miles of the establishment approximately 1,000,000 boxes of citrus fruit each season, being much more citrus fruit than the total quantity annually obtained by the defendant for use in its establishment".

Mr. Reeves:

If your Honor please, we offer in evidence certified copy of the decree entered by Judge Akerman in the case of Lake Wales Citrus Growers, v. Andrews which was filed in this Court on July 11th, 1939, and the record certified to by the Clerk of the Court under seal of the Court.

Mr. Garrett:

To which offer we make numerous and serious objections without making any objection whatever to the Court taking whatever judicial notice of that as he sees fit to take. Whether or not he can take judicial notice of it, we waive that, but as to being a part of the record or proof, we take exception. One reason, the same parties

involved there are not the parties involved here. The parties involved in that case were never a party, either by inference or otherwise, and the root of it is the decree was reversed and set aside, and while it may have been reversed on only one point in regard to which the Circuit Court of Appeals deemed it defective, there is no reason in the world to assume that if that point had not existed the Circuit Court of Appeals would not have reversed it for some other reason that might be relevant in this case. It isn't the law and it isn't a part of the issues in this case and it ought not be filed as evidence in this case because it has no approach to the ingredients of the evidence here. It doesn't in any way effect our situation, and would be described by the Latin masters as res inter alios actum—between other parties.

Mr. Reeves:

We don't contend this is res adjudicata, but we feel that the Court can take judicial knowledge of that opinion and for the convenience of the Court, more than anything else, we have produced this decree and ask the Court to let it be filed. If the Court admits it could be harmless error, the Clerk can get that report for the Court.

The Court:

The Court has access to it anyway; there is no use to build up this record. Objection sustained.

Mr. Reeves:

May we ask permission to leave this with the files for your Honor's convenience.

Mr. Garrett:

That's all right. You can have it marked for identification.

Mr. Reeves:
Mark it for identification.

. . . . . Thereupon, the document last referred to was marked Defendant's Exhibit No. J for Identification.

Mr. Reeves:
That's all for the defendant.

Mr. Garrett:
I would like counsel for the defendant to stipulate as follows:

During the seasons herein and throughout that are involved in this case there were more than 10 employees in the canning factory engaged in the operation known as peelers, and more than 10 engaged in the operation known as sectionizers, and more than 10 engaged in the operation known as inspectors, and more than 5 engaged in the operation known as piece checkers, and 2 floor walkers and less than 5 hour hands. Is that correct?

Mr. Reeves:
The defendant does not concede that the number of employees in any of the classifications, or in all of them, are material to the issues, but will concede that to be the facts.

Stipulation.

It is stipulated that the two seasons involved are 1938-1939 and 1939-1940, and that during these seasons the establishment operated as follows:

1. Beginning the season November 14th, 1938, and ending on May 26th, 1939, and that during that period of

time the plant was in actual operation from November 14th, 1938, to and including December 31st, 1938, consisting of 7 work weeks; that from January 1st, 1939, to May 26th, 1939, there were 31 work weeks.

2. That the plant began operations on November 16th, 1939, and operated to and including March 30th, 1940, and that during this period of time the plant was in actual operation 6 work weeks from November 16th, 1939, to December 31st, 1939, and in actual operation 13 work weeks from January 1st, 1940, to March 30th, 1940.

That the usual and customary operating season for citrus canners in Florida is approximately from November 1st to June 1st, depending upon supply and demand, climatic conditions and so forth.

Mr. Garrett:

If the Court please, on this hearing the facts of the complaint stand admitted. You are now determining the sufficiency of an affirmative plea and that only, and, therefore, the fact that we have made allegations that we were underpaid and over-worked is not necessary to be proved, but stands affirmed for the time being.

Mr. Reeves:

I understand, Mr. Garrett, that is not involved at all.

The Court:

It is a question now of whether or not the 5th Defense is proven.

. . . . Thereupon, a discussion was had off the record.

Mr. Reeves:

Counsel having announced the purpose of putting this witness on, the defendant objects to this line of testimony

on the ground that it is immaterial and irrelevant and has no bearing upon the issues in this cause, the Court having heretofore entered an order that the purpose of this hearing, that it would be considered that that part of the definition limiting the number of employees would be discarded and not considered.

The Court:

I will withhold my ruling and allow her to testify.

170 MRS. SALLY BAKER, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Garrett:

Q. What is your name?

A. Sally Baker.

Q. Did you work for the Holly Hill Fruit Products, Inc., at Davenport, Florida, during the seasons of 1938-1939, 1939-1940?

A. Yes.

Q. During and throughout the season of 1938-1939, 1939-1940?

A. Yes.

Q. What job did you have with them?

A. Floor lady; assistant floor lady.

Q. In what department of their business?

A. In the cannery department.

Q. As such were you familiar with the number of employees working there in the cannery during and throughout those seasons?

A. I think I am.

Q. Approximately how many peelers did you have during and throughout those seasons?

A. I should say in '38 and '39 between 40 and 50.
Q. And during the subsequent season, how many?
A. You mean in '41?
Q. No, between '39-'40?
A. Between 40 and 50 all during the time.
Q. How many sectionizers?
A. In the year 1938 and part of 1939, we had around 175.
Q. '39-'40?
A. We had 200.
Q. How many of these employees were piece workers?
A. That was piece workers—sectionizers.
Q. They got paid for how much they did?
A. Yes, sir.
Q. Regardless of the hours they put in?
A. Yes, sir.
Q. How many of the workers in the cannery—

Mr. Reeves: (Interrupting):
We move to strike the testimony of Mr. Garrett to which the witness agreed on the ground that it is immaterial and irrelevant. He gets into a feature of the case that the Court is not taking testimony on, to-wit: Whether a piece worker is paid by the piece regardless of the hours worked.

The Court:
I don't see where that feature is material at this time.

Mr. Garrett:
Q. How many were hour hands?
A. Well, we had 6 inspectors, what we call them, and in 1938 and part of 1939; and then in 1939-1940 we had 5 checkers and 2 inspectors that stood inside of the belts.
Q. Were floor walkers hour hands?
A. They were.

Q. How many did you have in each season?
A. 2.
Q. Did they have piece checkers?
A. That was the checkers—the 5.
Q. What about peelers? Were they hour hands?
A. No, piece workers.
Q. Anybody else working there in the cannery except those peelers and sectionizers were hour hands?
A. There were can boys.
Q. They were all hour hands except the sectionizers and peelers?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. The whole season?
A. Yes, sir.

Mr. Garrett:
That's all.

Mr. Reeves:
No questions.

(Witness excused.)

. . . . Thereupon, the hearing in the above entitled cause adjourned.

174 DEFT'S. EX. A.

Filed in Evidence, Dec. 2, 1942. Edwin R. Williams, Clerk.

Amended
Articles of Incorporation
of
Holly Hill Fruit Products, Incorporated.

Know All Men By These Presents: That we, the undersigned producers of citrus fruit in the State of Florida,

do hereby voluntarily associate ourselves together for the purpose of forming a non-profit, co-operative marketing association, with capital stock, under "The Agricultural Cooperative Act" of the State of Florida.

Article I.

The name of this association shall be Holly Hill Fruit Products, Incorporated.

Article II.

This association is organized for the purpose of engaging in any cooperative activity in connection with the producing, marketing or selling of agricultural products; with the growing, harvesting, preserving, drying, processing, canning, packing, grading, storing, warehousing, handling, shipping, and utilizing such products; the manufacturing or marketing of the by-products thereof; and in connection with any of the activities mentioned herein, the manufacturing, selling and supplying of machinery, equipment or supplies; and in the financing of any of the above enumerated activities; and in performing and furnishing business or educational services, on a cooperative basis for those engaged in agricultural as bona fide producers of agricultural products or in any one or more of the activities specified herein.

Article III.

The general nature and powers of the business or businesses to be transacted by this association shall be as follows:

(a) To engage in any activity in connection with the producing, marketing, selling, preserving, growing, har-

vesting, drying, processing, manufacturing, canning, packing, grading, warehousing, storing, handling or utilizing of agricultural products, especially citrus products; or in the manufacturing or marketing of the by-products thereof; or in any activities in connection with the manufacturing, purchasing, hiring or using supplies, machinery or equipment; or in the financing of any of the above enumerated activities, or in performing business or educational services, on a cooperative basis, for those engaged in agriculture as a bona fide producers of agricultural products; or in any one or more of the activities specified herein.

(b) To borrow money from any source without limitation as to the amount of corporate indebtedness or liability, with authority to give any kind or form of obligation or security therefor.

(c) To act as agent or representative of any person or persons in any of the above mentioned activities.

(d) To make loans or advances to members and to their members, to non-member patrons, and to non-member patrons of members, with authority to accept therefor any kind, form or type of obligation with or without security; to purchase, indorse, discount, sell or guarantee the payment of any note, draft, bill of exchange, indebture, bill of sale, mortgage or other obligation, the proceeds of which have been advanced or used in the first instance for any of the purposes provided for herein; to discount for or purchase from any association organized under the laws of any State, with or without its indorsement, any note, draft, bill of exchange, indenture, bill of sale, mortgage or other obligation the proceeds of which are advanced or used in the first instance for carrying on any cooperative activity authorized in this act and with authority to dispose of same with or without indorsement.

(e) To purchase or otherwise acquire, to hold, own, and exercise all rights of ownership in, and to sell, transfer, pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares, of capital stock, bonds, or other obligations of any corporation or association, engaged in any directly or indirectly related activity, or in the producing, picking, hauling, packing, shipping, handling, warehousing, financing, canning, preserving, processing, manufacturing, utilizing, marketing, or selling of any of the products handled by the association, or any by-products thereof.

(f) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the By-Laws.

(g) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

(h) to sell, convey, and transfer all of the assets of this association; provided, such sale shall be consented to by the holders of not less than two-thirds of its common stock, which consent shall be given either in writing, or by vote at a special meeting of its stockholders called for that purpose.

(i) To establish, secure, own and develop patents, trade-marks and copyrights.

(j) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest

or benefit of the association, and to contract accordingly; and in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers and privileges granted by the laws of this state to corporations for profit; except such as are inconsistent with the express provisions of the laws of this State; and to do any such thing anywhere.

(k) This association shall not deal in products, handle machinery, equipment or supplies or perform services for and on behalf of non-members to an amount greater in value than such as are dealt in, handled or performed by it for and on behalf of its members during the same period.

(l) To also have any powers hereinafter granted to co-operative associations by subsequent amendments to the Laws under which this association is incorporated.

Article IV.

The principal place of business of this association is to be Davenport, in the County of Polk, and State of Florida.

Article V.

The term for which this association shall exist is fifty (50) years from the date of its incorporation.

Article VI.

The business of this association shall be conducted by a Board of Directors in such number as shall be designated by the By-Laws, which in no event shall be less

than three. Any legally called meeting of the stockholders in which a majority of the stock is represented may increase or decrease the number of Directors by amendment to the By-Laws. The term of office of a Director shall expire at the next annual meeting of the association after his election or until his successor is elected by the stockholders.

Article VII.

The names and residences of the directors of this association who are to conduct the business thereof until their successors are elected and qualified, are:

D. H. McConnell, Suffern, New York; Herman H. B. Meyer, Washington, D. C.; D. W. Smith, Chicago, Illinois; R. H. Dewson, Boothbay Harbor, Maine; R. B. Huffaker, Bartow, Florida; R. M. Atkins, Port Huron, Mich.; W. A. Nicholson, Davenport, Florida.

Article VIII.

As Amended.

This Association shall be a capital stock corporation. The maximum number of shares of stock that it is hereby authorized to have outstanding at any one time shall be fifteen thousand (15,000) shares, of the par value of Twenty ($20.00) Dollars per share. Of the said authorized capital stock, twelve thousand nine hundred and fifty (12,950) shares shall be designated common stock and two thousand and fifty (2,050) shares shall be designated six per cent. cumulative preferred stock. Upon redemption of the preferred stock authorized by Amended Article VIII (d) of the Charter, each share of preferred stock so redeemed shall be added to the number of shares

of common stock hereby authorized, to the end that upon redemption of all of said preferred stock the total number of shares of authorized common stock shall be restored to 15,000 shares. The common stock of the corporation now outstanding, or to be issued hereafter, and the preferred stock hereby authorized and when issued, shall be subject to the following conditions and restrictions:

(a) The common stock of this Corporation shall be issued to, and sold and owned only by owners of bearing citrus fruit groves whose groves are located within Townships 26 and 27, South and Range 27, East, Polk County, Florida, and on the basis of five shares per acre for each acre of such bearing citrus fruit grove, and upon the further condition that such grove owner shall market the citrus fruit so grown by him through this Corporation; provided, however, that no stockholder shall hold more than one-third of the outstanding capital stock of the association, whether of common or preferred stock or of both. The right of owners of common stock to vote at stockholders meetings, except as hereinafter provided, shall be limited and confined to stockholders who qualify under the above conditions.

(b) The property right of any owner of common stock who shall lose his voting right at stockholders' meetings by ceasing to be a qualified stockholder in the corporation as defined in the preceding paragraph, Article VIII (a), shall not be affected by the loss of such voting rights but the Board of Directors of the association may call in and retire such stock, and in such case the value of said stock shall be conclusively and equitably appraised by the Board of Directors at not less than par, and said stock shall be purchased and paid for by the corporation at the appraised value within one year after the appraisement

thereof. This provision, except as hereinafter provided, shall apply to outstanding stock not now qualified to be voted at stockholders' meetings in accordance with the foregoing conditions and restrictions as well as to present qualified stock that shall afterwards lose voting rights.

(c) All stock of the corporation now outstanding and qualified to vote at stockholders meetings in accordance with the foregoing conditions and restrictions shall be recalled and re-issued to the present qualified owner or owners, with all conditions and restrictions, including the provisions for appraisal and purchase of non-voting stock, as hereinbefore provided, made a part of the new certificate or certificates of stock.

(d) There shall be created and issued enough six per-cent. cumulative preferred stock of the par value of $20.00 per share to be exchanged for all of the Syndicate Stock now outstanding and which was issued pursuant to the agreement of the corporation with D. H. McConnell, E. H. Dewson, and Fred S. Bates, as Trustees, dated April 15, 1930. The said stock shall have voting rights at all stockholders' meetings, but shall not participate in dividends declared on common stock. The corporation shall have the right, however, of redeeming all or any part of the said Syndicate Stock at par in preference to issuance of said preferred stock in exchange therefore, and upon the issuance of any of said preferred stock it shall be made a condition thereof that the corporation may at any time and upon thirty days written notice purchase and retire said stock at par with the accrued guaranteed interest thereon to date of redemption.

Upon the purchase by the corporation of any of said preferred stock it shall not be re-issued, but with the written assent of a majority of the Board of Directors

an equivalent number of shares of common stock may be issued and sold to qualified stockholders in such amounts as may be needed to complete their allowable quota.

It shall be further provided, however, that any holder and owner of any of said Syndicate Stock who is qualified to own common stock of the corporation shall have the right to elect to retain as voting and participating common stock of the corporation five shares for each acre of qualified bearing citrus groves owned by such stockholder, or sufficient of such stock when added to other common stock owned by the owner that shall not exceed five shares per acre of qualified bearing grove and in the aggregate not more than one-third of the outstanding capital stock, and upon the exercise of such option the said Syndicate Stock shall not be redeemed, nor shall preferred stock be issued therefor. Each owner of Syndicate Stock shall be given thirty days written notice of such election and such election shall be exercised within said thirty days. Otherwise the provision as to redemption of said Syndicate Stock or the exchange therefor of preferred stock shall prevail. Upon the exercise of the option herein granted to owners of any of said Syndicate Stock to retain common stock in the place of said preferred stock, the common stock so retained instead of said preferred stock shall be re-issued as provided by Article VIII (c).

(e) Upon the purchase and retirement of non-voting common stock, the officers of the corporation shall endeavor to sell and issue an equal amount of treasury common stock to qualified grove owners at a price to be fixed by the Board of Directors, to the end that as many qualified citrus growers as possible within said territory shall become members of the association and shall own five

shares of common stock for each acre of bearing grove, but so that no one grower shall own more than one-third of the outstanding capital stock.

Amended Article IX.

No dividend on the common stock of this Association shall be declared at a rate in excess of eight (8%) per centum per annum. All profits in excess of eight (8%) per centum may be used by the association for the purpose of establishing and accumulating reserves, including a permanent surplus fund as an addition to capital, or in the proper exercise and expansion of its functions, or in distribution to its producers on the basis of patronage.

Amended Article X.

The By-Laws of this association, subject to the provisions of the articles of association, shall provide the method of issuance, retirement and transfer of its stock.

Amended Article XI.

Every holder of common stock of record shall be entitled at each meeting of the stockholders of this association and upon each proposal presented at such meeting to one vote for each and every share of stock standing in his name on the books of the association, subject to the limitation that no stockholder may own more than one-third (1/3) of the outstanding capital stock of the association. The common stock of a member of the association, who ceased to be the owner of a bearing citrus fruit grove located within Townships 26 and 27, South, and Range 27, East, or being the owner of such grove and does not market the citrus fruit so grown by him through this association, shall lose all voting rights and privileges un-

til it becomes vested in the hands of a qualified grove owner.

Article XII.

The officers of this corporation shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, and one or more Assistant Secretaries and Assistant Treasurers, and Managers, all of which shall be elected by the Board of Directors at the time and in the manner prescribed by the By-Laws.

Article XIII.

These articles of incorporation can be altered or amended at any annual meeting or any special meeting called for that purpose, provided such amendments are passed and filed with the Secretary of the State of Florida under and according to appropriate provisions of law.

Article XIV.

These Articles of Incorporation are adopted under Section Twenty-three (23) of "The Agricultural Cooperative Act" of the State of Florida, by a majority vote of all the stockholders of Holly Hill Fruit Products, Incorporated, a corporation for profit heretofore organized and existing under the laws of the State of Florida, in order to bring said corporation under the provisions of said "The Agricultural Cooperative Act" of the State of Florida by adopting the various restrictions as provided for in said Act. These Articles of Incorporation are filed by the incorporating Directors as named herein, who are the present members of the present Board of Directors of Holly Hill Fruit Products, Incorporated, a corporation for profit under the laws of the State of Florida, in accordance with

the decision of the stockholders, by a majority vote thereof, to accept the benefits and be bound by the provisions of the said "The Agricultural Cooperative Act" of the State of Florida.

In Witness Whereof the foregoing Articles of Incorporation of Holly Hill Fruit Products, Incorporated, are hereby subscribed by the undersigned incorporators and are acknowledged by one of said incorporators before an officer authorized by law to take and certify acknowledgments of deeds and conveyances all for the purpose of filing said Articles of Incorporation in accordance with the law of the office of the Secretary of the State of Florida.

D. H. CAMPBELL, (Seal)
HERMAN H. B. MEYER, (Seal)
D. W. SMITH, (Seal)
E. H. DEWSON, (Seal)
R. B. HUFFAKER, (Seal)
R. M. ATKINS, (Seal)
W. A. NICHOLSON. (Seal)

Amended Articles of Incorporation of Holly Hill Fruit Products, Incorporated Filed in the Office of the Secretary of State February 9, 1934. Amendments to Articles VIII, IX, X and XI filed in the Office of the Secretary of State February 3, A. D. 1938.

I, G. B. Howe, the duly qualified elected and acting secretary of the Holly Fruit Products, Inc., do hereby certify that the above and foregoing is a true and correct copy of the Charter of said Corporation as amended.

Witness my hand and official seal of the said corporation at Davenport, Florida this 20th day of October, 1942.

G. B. HOWE,
(Corporate Seal) Secretary, Holly Hill Fruit Products, Inc.

180 DEFT'S EX. B.

Addison,
vs. 441 Civ. T.
Holly Hill Fruit Products.

Filed in Evidence Dec. 2, 1942. Edwin R. Williams, Clerk.

By-Laws of Holly Hill Fruit Products, Incorporated, a Corporation Created and Existing Under the Provisions of Chapter 14675, Laws of Florida, 1931, Known as the Agricultural Cooperative Act, a Non-Profit, Cooperative Marketing Association.

Article I.

Name and Location.

Section 1. The name of this corporation shall be Holly Hill Fruit Products, Incorporated, a non-profit, cooperative marketing association under the Agricultural Cooperative Act of the State of Florida.

Section 2. Its principal office shall be located at Davenport, Polk County, Florida. The Association shall have the right to establish branch offices and places of business at other places in the State of Florida and other States of the Union.

Amended Article II.

Capital Stock.

Section 1. The capital stock of this Association shall consist of fifteen thousand (15,000) shares, of the par value

of twenty ($20.00) Dollars per share. Of the said authorized capital stock, twelve thousand nine hundred and fifty (12,950) shares shall be designated common stock and two thousand and fifty (2,050) shares shall be designated six per cent. cumulative preferred stock. Upon redemption of the preferred stock authorized by Amended Article VIII (d) of the Charter, each share of preferred stock so redeemed shall be added to the number of shares of common stock hereby authorized, to the end that upon redemption of all of said preferred stock the total number of shares of authorized common stock shall be restored to 15,000 shares.

Restrictions.

Section 2. The common stock of this Corporation shall be issued to, and sold and owned only by, owners of bearing citrus fruit groves whose groves are located within Townships 26 and 27, South, and Range 27 East, Polk County, Florida, and on the basis of five shares per acre for each acre of such bearing citrus fruit grove, and upon the further condition that such grove owner shall market the citrus fruit so grown by him through this Corporation; provided, however, that no stockholder shall hold more than one-third of the outstanding capital stock of the association, whether of common or preferred stock or of both. The right of owners of common stock to vote at stockholders meetings, except as hereinafter provided, shall be limited and confined to stockholders who qualify under the above conditions.

Voting Rights.

Section 3. Every holder of preferred stock of record and every holder of common stock of record owned by qualified common stockholders as defined in Article II,

Section 2 hereof, shall be entitled at each meeting of the stockholders of this Association, and upon each proposal presented at such meeting, to one vote for each and every share of stock standing in his name on the books of the Corporation.

Loss of Voting Rights.

Section 4. The common stock of any stockholder or member of this Association who ceases to be a qualified common stockholder as defined in Article II, Section 2 hereof, shall lose all voting rights and priviléges until said stock shall become vested again in the hands of a qualified stockholder.

Appraisal of Stock.

Section 5. The property right of any owner of common stock who shall lose his voting right at stockholders' meetings by ceasing to be a qualified stockholder in the corporation as defined in Article II, Section 2, hereof, shall not be affected by the loss of such voting rights; but the Board of Directors of the Association may call in and retire such stock and in such case the value of said stock shall be conclusively and equitably appraised by the Board of Directors at not less than par, and said stock shall be purchased and paid for by the corporation at the appraised value within one year after the appraisement thereof. This provision, except as hereinafter provided, shall apply to outstanding stock not now qualified to be voted at stockholders meetings in accordance with the foregoing conditions and restrictions as well as to present qualified stock that shall afterwards lose voting rights.

Calling in and Re-Issuance of Stock.

Section 5a. All stock of the corporation except the Syndicate Stock issued pursuant to the agreement of April

15, 1930, for which preferred stock shall be exchanged, now outstanding and owned by qualified stockholders as defined in Article II, Section 2, hereof, shall be recalled and re-issued to the present qualified stockholders, with all conditions and restrictions, including the provisions for appraisal and purchase of non-voting stock, as provided by Amended Article VIII of the Charter and by these By-Laws, incorporated into and made a part of the certificate of stock; provided, however, that any such stockholder may elect to retain his present certificate or certificates of stock, but in such event the said stockholder shall attach to his certificate or certificates of stock a rider provided by the secretary of the association certifying to the fact that the said stock is subject to said conditions and restrictions.

How Stock Issued.

Section 6. All certificates of stock shall be signed by the President or Vice-President and the Secretary and shall be sealed with the corporate seal.

Transfer of Stock.

Section 7. Transfers of stock shall be made only on the books of the Corporation; and the old certificate properly indorsed shall be surrendered and canceled before a new certificate is issued; but no stock shall be transferred to anyone who is not engaged in the production of citrus fruits in the State of Florida.

Loss of Stock.

Section 8. In the case of loss or destruction of a certificate of stock no new certificate shall be issued in lieu thereof, except upon satisfactory proof to the Board of

Directors of such loss or destruction. Any such new certificate shall be plainly marked "duplicate" upon its face.

Article III.

Amended.

Stockholders' Meetings.

Annual Meeting.

Section 1. An annual meeting of the Stockholders shall be held at 10:00 A. M. on the first Tuesday in March in each year at the office of the Association, Davenport, Florida; if such day shall fall upon a legal holiday the meeting shall be held on the next succeeding business day. At such meeting the stockholders shall elect the directors to serve until their successors shall be elected and qualified.

Special Meetings.

Section 2. The Board of Directors shall have the right to call a special meeting of the stockholders at any time. Written notice of all special meetings, together with a statement of the purposes thereof shall be mailed to each stockholder at least ten days prior to the meeting.

Notice of Stockholders' Meetings.

Section 3. Notice of the time and place of annual and special meetings shall be mailed by the Secretary to each stockholder at his place of residence as shown upon the stock book of the Association not less than ten days before the date thereof.

Presiding Officer at Stockholders' Meetings.

Section 4. The President, or in his absence either Vice President, shall preside at all stockholders' meetings.

Voting by Proxy.

Section 5. At every stockholders' meeting the vote of a qualified stockholder may be cast by him by proxy. All proxies shall be in writing and shall be filed with the Secretary and by him entered of record in the minutes of the meeting.

Quorum.

Section 6. A quorum for the transaction of business at stockholders' meeting shall consist of the number of persons representing a majority of the shares of stock, entitled to vote, issued and outstanding, but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to a future time.

Order of Business.

Section 7. At the annual meeting of stockholders the following shall be the order of business, viz.:

1. Calling Roll.
2. Reading notice and proof.
3. Report on, and verification of, proxies.
4. Report of officers.
5. Report of Committees.

6. Unfinished business.

7. New business.

8. Election of Directors.

9. Miscellaneous business.

Article IV.

Directors.

Qualifications and Vacancies.

Section 1. The business and property of the Association shall be managed by a board of seven directors who shall be stockholders and co-operating producers of the Association and who shall be elected annually by the stockholders for the term of one year, and shall serve until the election and acceptance of their duly qualified successors. Any vacancy occurring other than by the expiration of term may be filled by the remaining members of the Board by a majority vote, for the unexpired term.

Regular Meetings.

Section 2. A regular meeting of the Board of Directors shall be held in the office of the Association immediately after the adjournment of each annual stockholders' meeting.

A regular monthly meeting of the Board of Directors may be held in the principal office of the Association in Davenport, Florida, or at any other place in or out of the State of Florida, agreeable to the majority of the directors, on the first Tuesday of each month at 11:00 A. M.,

if not a legal holiday, and if a legal holiday, then on the next business day following. If a regular meeting is held at any place other than the principal office of the Company in Davenport, Florida, notice of such meeting must be mailed to each director at least fifteen days prior to such meeting. The Board of Directors shall meet regularly at least once each year.

Special Meetings.

Section 3. A special meeting of the Board of Directors may be held in the principal office of the Company in Davenport, Florida, at any time on call of the President or of any three members of the Board. Upon request of any three directors the President must call a special directors' meeting.

A special Directors' meeting may be held at any time or place in or out of the State of Florida agreeable to the majority of the Directors. The Secretary must mail to each Director a notice of any special meeting fifteen days prior to the date of any special Directors' meeting, whether at the office of the Company or at any other place in or out of the State of Florida. However, any special Directors' meeting may be held at any time or place in or out of the State of Florida, without notice when all members are present and participate in such meeting; or special directors' meeting may be held at any time or place in or out of the State of Florida without notice when agreed to in writing by all directors.

Quorum of Boa.d.

Section 4. A quorum at any meeting shall consist of a majority of the entire membership of the Board. A majority of the Directors present shall decide any question that may come before the meeting.

Election of Officers of the Association.

Section 5. Officers of the Association shall be elected by the Board of Directors at their first meeting after the election of Directors each year. If any becomes vacant during the year the Board of Directors shall fill the same for the unexpired term. The Board of Directors shall fill the same for the unexpired term. The Board of Directors shall fix the compensation of all officers of the Association.

Election or Appointment of Officers Other Than Those Provided for in the Charter.

Section 6. The Board of Directors may designate one of the Vice Presidents to perform the duties usually performed by a general manager of a corporation. Such Vice President, under the direction of the Board of Directors, shall employ and discharge all employees, agents and laborers of the Association. The Board of Directors may appoint such additional officers as shall be required to carry on the business of the Association, such officers to serve at the pleasure of, and on terms and conditions set by, the Board.

Order of Business.

Section 7. The order of business at any regular or special meeting of the Board of Directors shall be:

1. Reading and disposal of any unapproved minutes.

2. Report of officers and committees.

3. Report of Executive Committee.

4. Unfinished business.

5. New business.

6. Adjournment.

Article V.

Executive Committee.

Section 1. The Board of Directors may elect an Executive Committee of four members, two of whom need not be members of the Board, but two of the members of this Committee shall be members of the Board of Directors, and one of such members shall be the President of the Corporation. The Chairman of the Executive Committee shall be the President of the Corporation, and such Committee shall serve at the pleasure of the Board of Directors, except the President.

Duties and Powers.

Section 2. The Board of Directors may allot to such Executive Committee all or any stated portion of the functions and powers of the Board of Directors, subject to the general direction and control of the entire Board.

Reports.

Section 3. All actions by the Executive Committee taken in behalf of the Board of Directors shall be reported to the Board of Directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the Board of Directors; provided that no rights or acts of third parties shall be affected by any such revision or alteration.

Article VI.

Officers.

Section 1. The officers of this Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer; and such other officers as may be deemed necessary by the Board of Directors, including a General Manager, but the Board of Directors shall have the power as provided in section 6 of Article IV of these By-Laws, instead of electing a General Manager, to designate one of the Vice Presidents to perform the duties usually performed by a general manager of a corporation.

Terms of Office.

Section 2. The term of office of each officer provided for in section one, shall be for one year, or until the election and acceptance of office by his successor.

Secretary-Treasurer.

Section 3. The office of Secretary and Treasurer may be combined into one office designated as Secretary-Treasurer, or both functions and title may be united in one person.

Duties of Officers.

Section 4. President. The President shall preside at all directors and stockholders meetings, shall have general superintendence over the affairs of the Association and over the other officers, shall sign all stock certificates and written contracts of the corporation, and shall perform all such other duties as are incident to his office. In case of the absence or disability of the President, his duties shall be performed by a Vice-President.

Section 5. Secretary. The Secretary shall issue notices of all directors and stockholders meetings and shall attend and keep the minutes of the same, shall have charge of all corporation books, records and papers, shall be custodian of the corporate seal, shall attest with his signature and impress with the corporate seal all stock certificates and written contracts of the corporation and shall perform all other duties as are incident to his office.

Section 6. Treasurer. The Treasurer shall have custody of all moneys and securities of the corporation. He shall keep regular books, of account and shall submit them, together with all of his vouchers, receipts, records and other papers to the directors for their examination and approval as often as they may require, and shall perform all such other duties as are incident to his office.

Article VII.

Finances.

Section 1. No dividend on the stock of this association shall be declared at a rate in excess of eight (8%) per centum per annum. All profits in excess of eight (8%) per centum may be used by the association for the purpose of establishing and accumulating reserves, including a permanent surplus fund as an addition to capital, or in the proper exercise and expansion of its functions, or in distribution to its producers on the basis of patronage.

Section 2. Funds of the Association shall be deposited in such bank or trust company as the Directors shall designate and shall be withdrawn only on the check of the Association signed by the President, or a Vice-President, and countersigned by the Treasurer or by the Auditor when so designated by the Treasurer.

Article VIII.

Amendments.

Section 1. Amendments to these By-Laws may be made by a vote of the stockholders representing a majority of all the stock issued and outstanding at any annual or special stockholders' meeting.

I, G. B. Howe, the duly qualified, elected and acting Secretary of the Holly Hill Fruit Products, Inc., do hereby certify that the above and foregoing is a true and correct copy of the By-Laws of said Corporation.

Witness my hand and official seal of the said Corporation at Davenport, Florida this 20th day of October, 1942.

G. B. HOWE,

(Corporate Seal) Secretary, Holly Hill Fruit Products, Inc.

189 DEFT'S EX. E.

Addison
vs. 441 Civ-T.
Holly Hill Fruit Products.

Filed In Evidence Dec. 2, 1942. Edwin R. Williams, Clerk.

Holly Hill Fruit Products, Incorporated.

Packers, Canners, Shippers.

A Grower-Owned Organization.

Florida's Finest Tree-Ripened Citrus Fruit
from the Famous Holly Hill Groves,
Davenport, Florida.

Brands:

Holly Hill, Golden Hill, Bonny Hill.

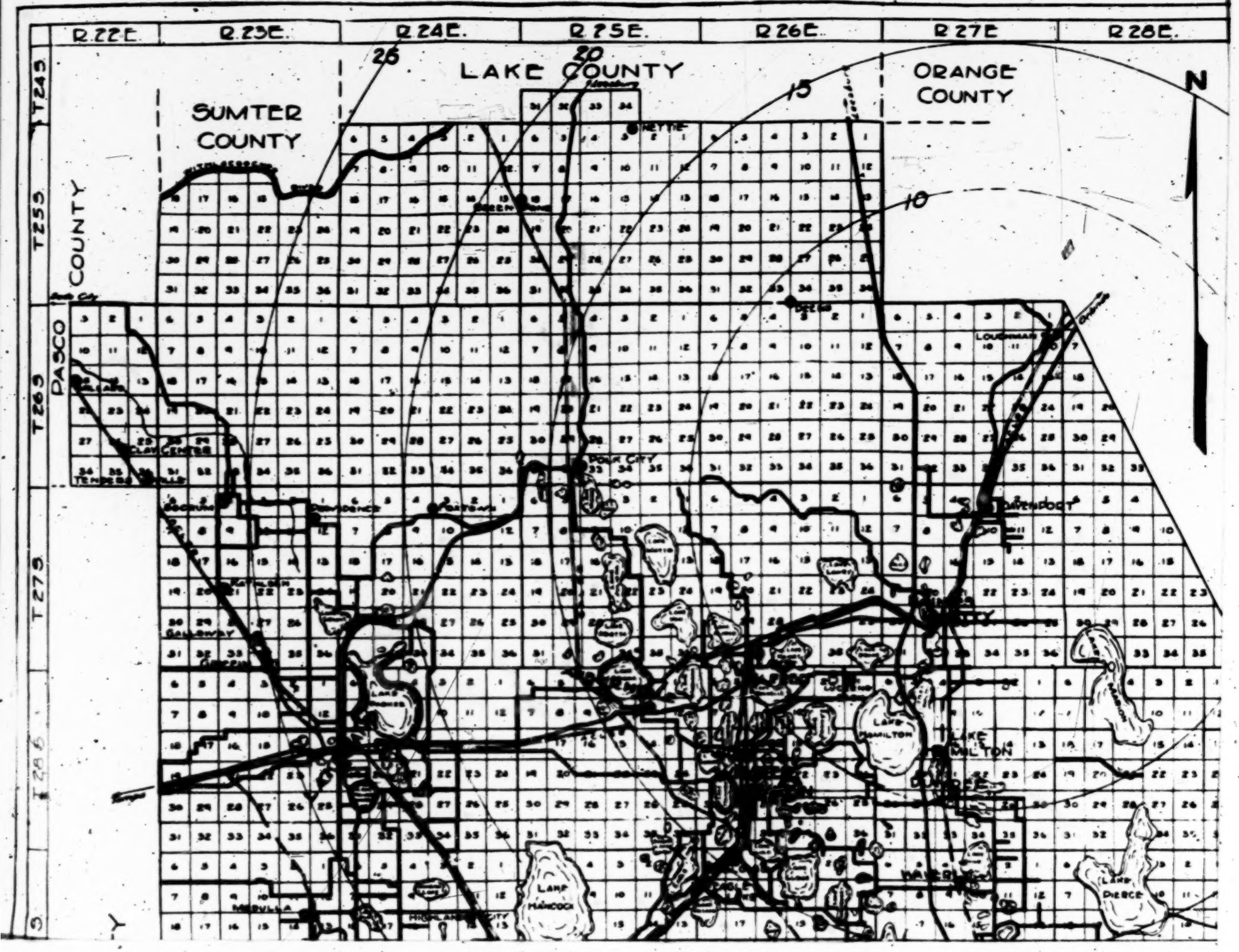
Copyright Registered U. S. Pat Office.

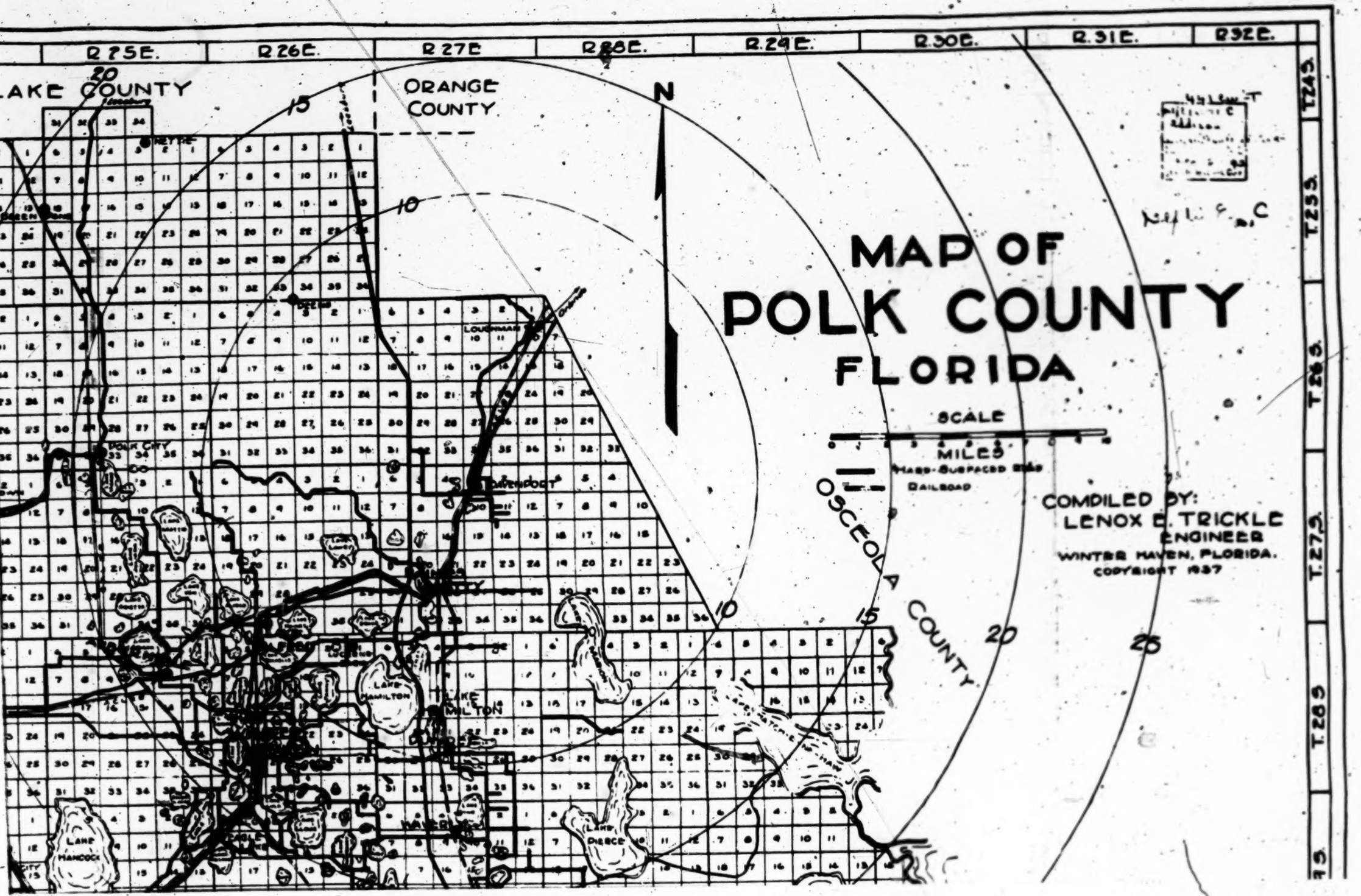
October 26, 1942.

Mr. Harry Strohm,
Davenport,
Florida.

Dear Sir:

As you probably know certain employees of the Holly Hill Fruit Products, Incorporated during the 1938-1939 and 1939-1940 citrus season have instituted suit in the Federal Court against the Company for additional wages allegedly


R.22E.
R.23E.
R.24E.
R.25E.
R.26E.
R.27E
R.28E.
T24S
T25S
T26S
T27S
T28S
SUMTER COUNTY
LAKE COUNTY
ORANGE COUNTY
PASCO COUNTY
26
20
15
10
N
DADE CITY
DAVENPORT
LAKE HAMILTON
LAKE MILTON
LAKE HANCOCK
LAKE PIERCE


R 25E.
R 26E.
R 27E
R 28E.
R 29E.
R 30E.
R 31E.
R 32E.
T 24S.
T 25S.
T 26S.
T 27S.
T 28S.
LAKE COUNTY
ORANGE COUNTY.
OSCEOLA COUNTY
N
MAP OF
POLK COUNTY
FLORIDA
SCALE
MILES
HARD-SURFACED ROAD
RAILROAD
COMPILED BY:
LENOX E. TRICKLE
ENGINEER
WINTER HAVEN, FLORIDA.
COPYRIGHT 1937
DAVENPORT
DUNDEE
LOUGHMAN
DAVENPORT
DUNDEE
LAKE HAMILTON
LAKE MILTON
LAKE MARIANNA
LAKE PIERCE
LAKE HANCOCK
EAGLE LAKE
HAINES CITY
DOVER
DOVER
DOVER

due them under the Federal Fair Labor Standards Act commonly called the Wages and Hours Law.

This suit has been made a test case for the entire citrus industry and is being handled by attorneys representing the various industry groups.

The outcome of this suit will determine to what extent the entire industry is involved under a Court interpretation of the "area of production".

We list below purchases made from you during the 1938-1939 and 1939-1940 citrus season and will greatly appreciate it if you will advise us the exact location of the grove or groves that this fruit was picked from.

If you are a purchaser of cannery fruit and you bought from Packing Houses, please try to ascertain what groves this fruit came from and location of same, with legal description if possible.

Please describe below the location of the groves producing the fruit which you sold to us. If you cannot ascertain the location of these groves please state the Packing House from whom you purchased this fruit. If you have no record and cannot secure the information requested, please so state in the margin below.

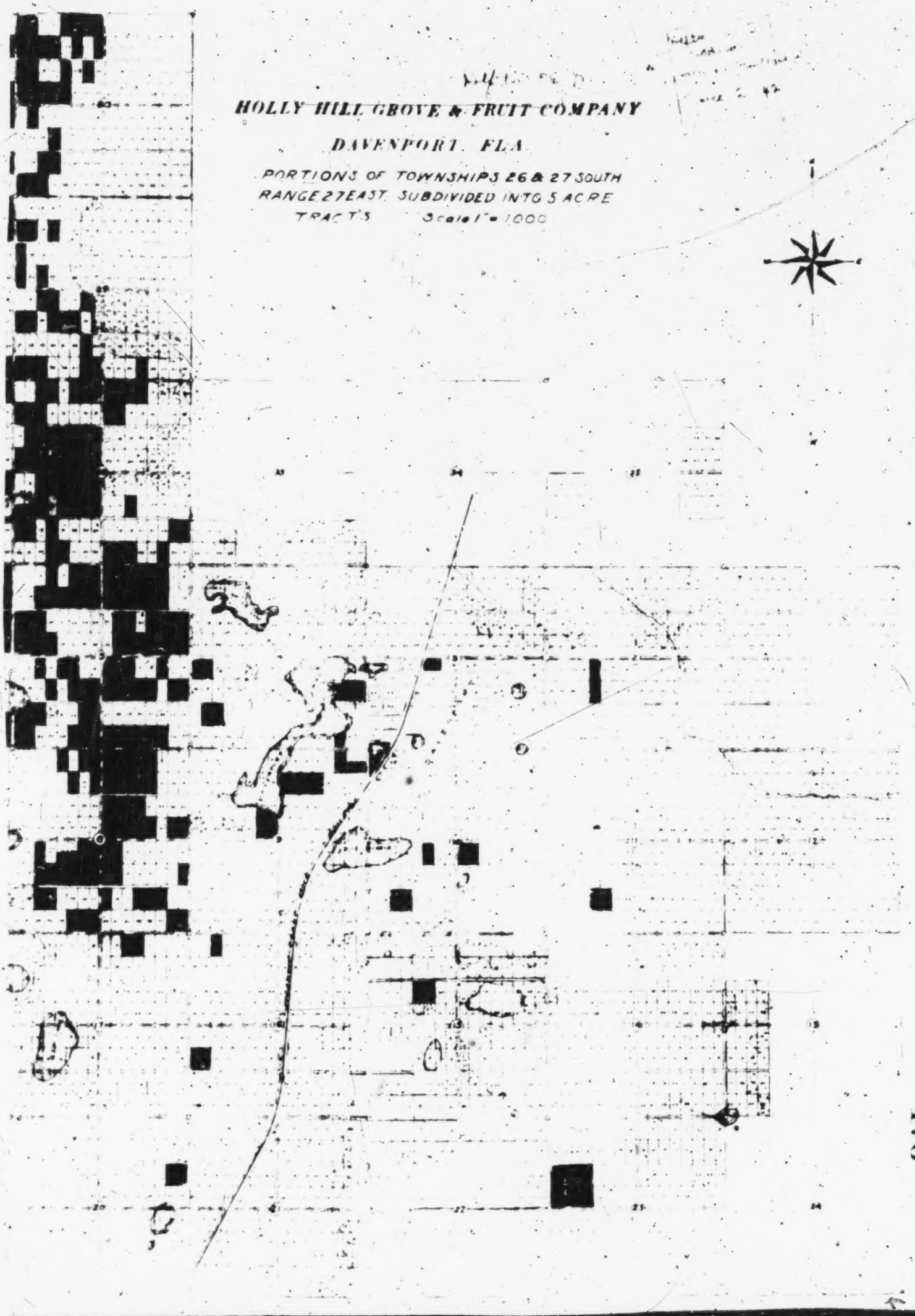
If you require any other information, please call the writer collect at 3211, Davenport.

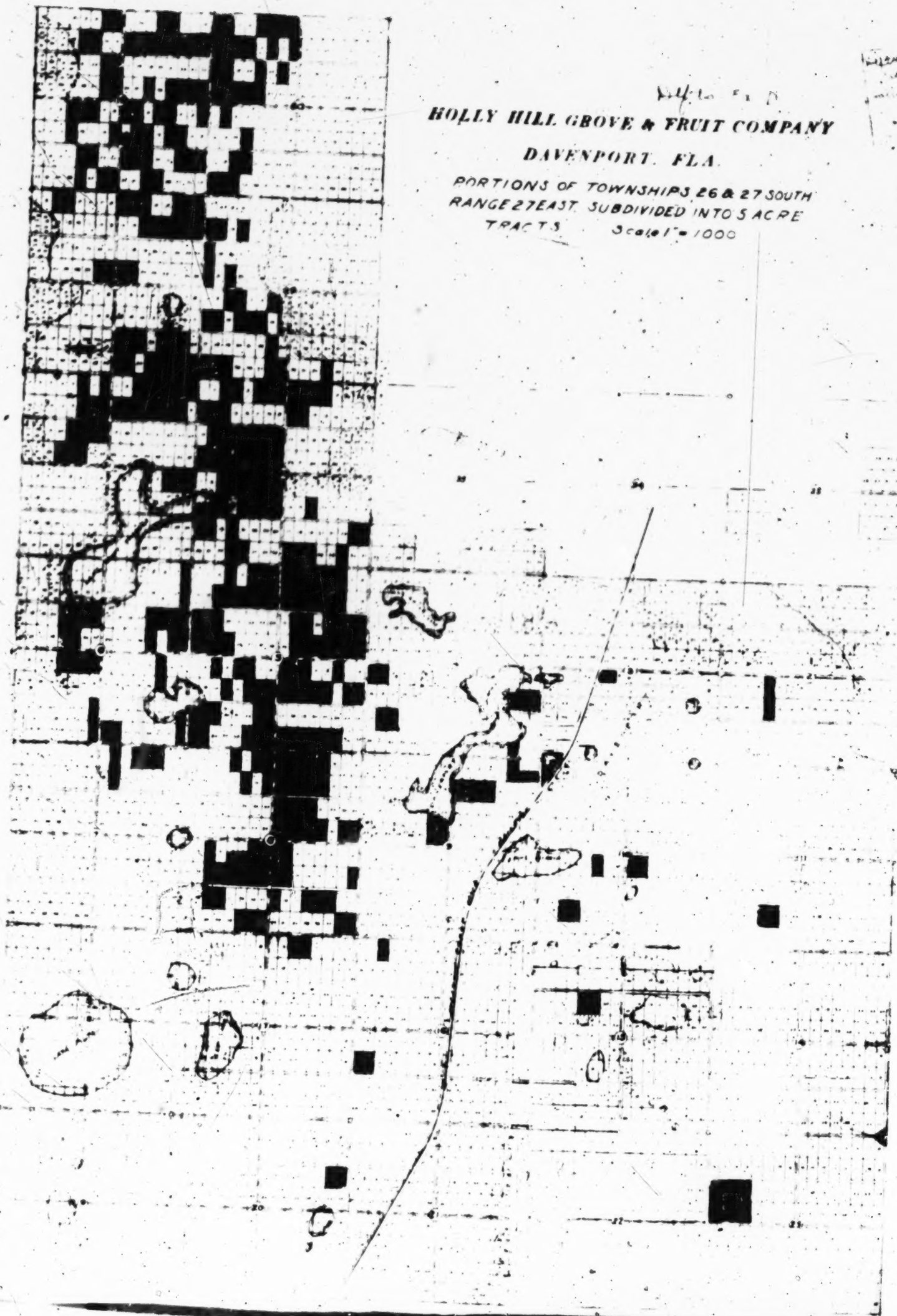
Yours very truly,
HOLLY HILL FRUIT PRODUCTS, INCORPORATED,
W. P. HICKMAN,
(W. P. Hickman);
Treasurer.

WPG:GH

Record of Fruit Purchases.

Date	Boxes of Fruit	Variety	Location of Legal Description of Grove or Groves
5-15-40	863	Oranges	Various groves within Holly Hill Groves area.


HOLLY HILL GROVE & FRUIT COMPANY
DAVENPORT. FLA.
PORTIONS OF TOWNSHIPS 26 & 27 SOUTH
RANGE 27 EAST. SUBDIVIDED INTO 5 ACRE
TRACTS
Scale 1" = 1000


HOLLY HILL GROVE & FRUIT COMPANY
DAVENPORT. FLA.
PORTIONS OF TOWNSHIPS 26 & 27 SOUTH
RANGE 27 EAST SUBDIVIDED INTO 5 ACRE
TRACTS
Scale 1" = 1000

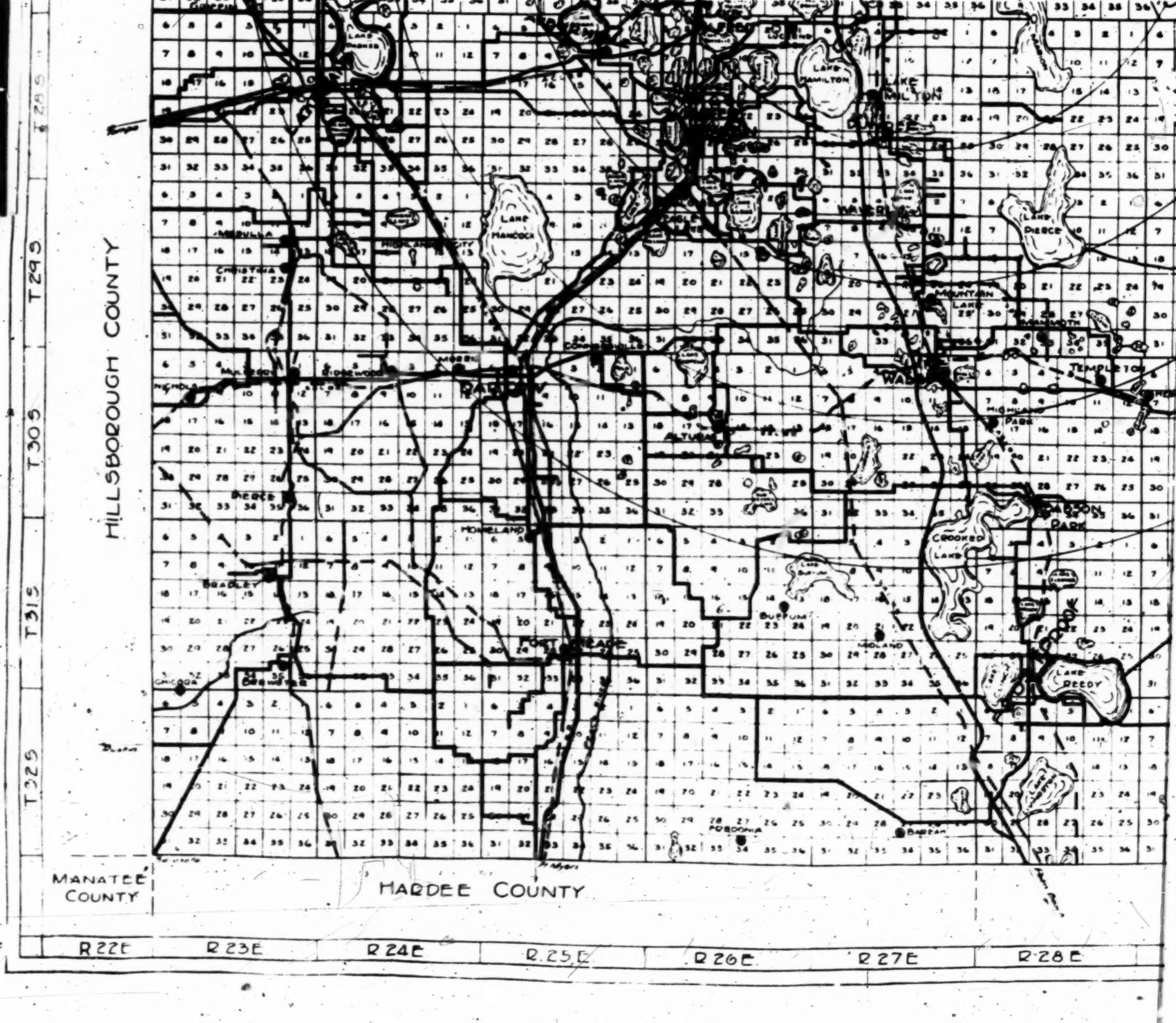
DEFT'S EXHIBIT F.

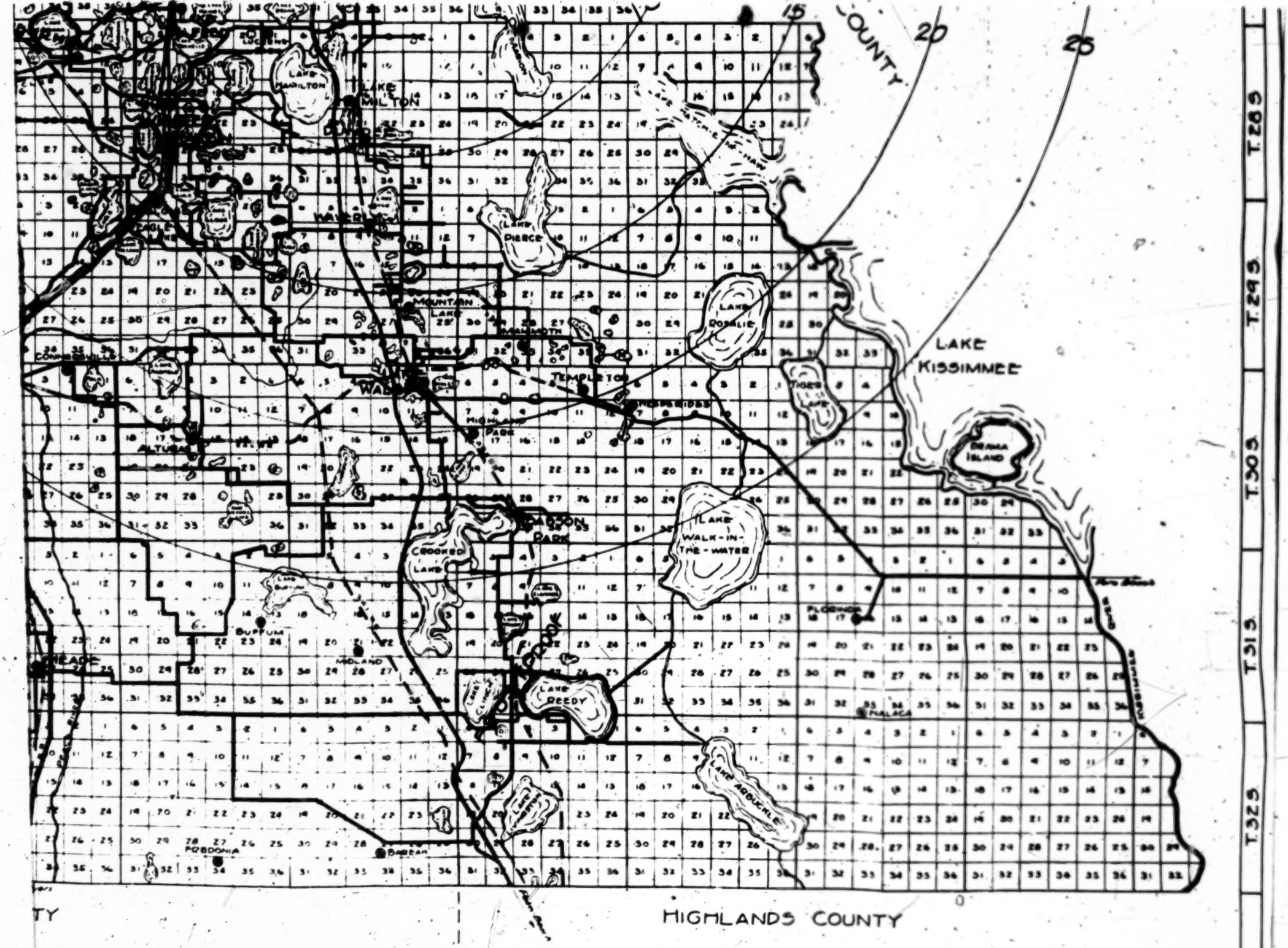
441 Civ.-T. Addison vs. Holly Hill Fruit Products. Filed in Evidence Dec. 2, 1942, Edwin R. Williams, Clerk.

Holly Hill Fruit Products, Incorporated.

Volume of Fruit Handled for the 1938-1939 and 1939-1940 Citrus Season.

	Boxes 1938-1939 Season	Percent 1938-1939 Season		Boxes 1939-1940 Season	Percent 1939-1940 Season	
Total Combined Volume:						
Packing House and Cannery	702160			458918		
Deduct: Fresh Fruit Packing House Volume	383618			89065½		
Canning Plant Volume	318542	100.00%		369852½	100.00%	
Holly Hill Groves Cannery Fruit	258857	81.26%		262256½	70.91%	
Grapefruit Distributors, Inc., Purchases	59685	18.74%		107596	29.09%	
Analysis of Grapefruit Distributors, Inc., Purchases by Distances of Grove From Cannery			Total			Total
Within 10 Miles	50899	15.98%	97.24%	75746	20.48%	91.39%
Within 15 Miles	1467	.46%		2550	.69%	
Within 20 Miles	0	0		0	0	
Within 25 Miles	4884	1.53%		11413	3.09%	
Over 25 Miles	0	0		0	0	
Unknown	3068	.96%		17995	4.86%	
Total	60318	18.93%		107704	29.12%	
Dumps, Rots, Etc.	633	.19%		108	.03%	
Net Total	59685	18.74%		107596	29.09%	


T29S
T30S
T31S
T32S
HILLSBOROUGH COUNTY
MANATEE COUNTY
HARDEE COUNTY
R22E
R23E
R24E
R25E
R26E
R27E
R28E
LAKE HAMILTON
LAKE MANCOCK
LAKE PIERCE
LAKE REEDY
CROOKED LAKE
MOUNTAIN LAKE
LAKE BUFFUM
WAUCHULA
ZOLFO SPRINGS
BOWLING GREEN
FORT MEADE
MULBERRY
BARTOW
BRADLEY
CHICORA
PIERCE
HOMELAND
CHRISTINA
LAKELAND
TEMPLETON
PARK
POBOCHNA
DARTAN


LAKE HAMILTON
LAKE MILTON
LAKE PIERCE
LAKE ROSALIE
LAKE KISSIMMEE
TIGER LAKE
DRAMA ISLAND
LAKE WALK-IN-THE-WATER
CROOKED LAKE
LAKE REEDY
LAKE ARBUCKLE
LAKE JOSEPHINE
WAVERLY
MOUNTAIN LAKE
LAKE WALES
TEMPLETON
HIGHLANDS PARK
ALTURAS
DAVENPORT
CONWAY
DUNDEE
EAGLE LAKE
DUFFUM
MIDLAND
FROSTPROOF
POLK CITY
SEBRING
PLACID
LAKE
PARK
15
20
25
T.28S
T.29S
T.30S
T.31S
T.32S
R26E.
R27E.
R28E.
R29E.
R30E.
R31E.
R32E
HIGHLANDS COUNTY

On December 2nd, 1942, the case came on for the taking of testimony pursuant to the Order of the Court dated October 2, 1942, and thereafter, on January 19, 1943, a transcript of the testimony taken at said hearing was filed being as follows:

(Copy of transcript of testimony by E. Marshall Stiefel consisting of 132 pages to be added here.)

ON JANUARY 26, 1943, THE COURT ENTERED HIS FINDINGS OF FACT AND CONCLUSIONS OF LAW ON ISSUES RAISED BY THE AMENDED FIFTH DEFENSE. IN WORDS AND FIGURES AS FOLLOWS:

196 (Title Omitted.)

And now this day, this cause coming on to be heard, upon due notice upon the sufficiency of the Fifth Defense, as amended, on July 1st, 1942, and pursuant to testimony taken on December 2nd, 1942, by the Court, without jury, on the sufficiency of said defense, and the Court having heard the argument of counsel, and being fully advised in the premises;

The Court finds the facts with reference to said Fifth Defense, as amended, to be as follows:

I. During the two seasonal periods in controversy the defendant-corporation operated a commercial canning plant for the canning of agricultural commodities to-wit, citrus fruits. Said plant was located in the town of Davenport, Polk County, Florida.

II. The evidence discloses that throughout the said two seasonal periods of operation of the defendant's establish-

ment in controversy, the defendant employed at said establishment in its canning operations and processes from 40 to 50 "peelers" and from 175 to 200 "sectionizers", both of which types of workers were known as "piece-workers", and six inspectors or checkers and inspectors, and two floor-walkers, all of whom were known as "hour hands".

III. The said town of Davenport is a town of 650 population, according to the 15th United States Census, 1930. It is situated within four miles of an incorporated town known as Haines City, Polk County, Florida, which had a population according to both the 15th U. S. Census, 1930, and the 16th U. S. Census, 1940, of over 3,000 persons.

IV. The canning season in Florida runs from approximately November 1 of one year to June 1 of the following year, and, in the two seasons complained of, the defendant was engaged in canning fruits during the following periods: From November 14, 1938 to May 26, 1939 and from November 16, 1939 to March 30, 1940.

V. Section 13 (a) (10) of said Act provides as follows:

"13. The provisions of section (6) wages provisions) and 7 (hours provisions) shall not apply with respect to—(10) to any individual employed within the area of production (as defined by the Administrator) engaged in handling, packing—preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market.—"

VI. The Wage and Hour Administrator promulgated on October 20, 1938, Section 536.2 of the Regulations, purporting to define "area of production" as follows:

"Section 536.2 'Area Of Production' As Used In Section 13 (a) (10) of The Fair Labor Standards Act. 'an indi-

DEFT'S EXHIBIT G.

441 Civ.-T. Addison vs. Holly Hill Fruit Products. Filed in Evidence Dec. 2, 1942, Edwin R. Williams, Clerk.

Grapefruit Distributors, Incorporated.

Fruit Purchases for the 1939-1940 Citrus Season.

Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Within 25 Mi. Boxes	Distance Unknown Boxes
11-16-39	E. Stone	49		Grapefruit						49
11-21-39	G. Stone	115		Grapefruit						115
11-22-39	B. C. Cook	4883	Haines City	Grapefruit	4883					
11-22-39	Lindsay & Hamric	193		Grapefruit						193
11-22-39	C. C. Spencer	313	Haines City	Grapefruit	313					
11-22-39	Perry Lloyd	125								125
12- 4-39	Tom Keegan	559	Dundee	Grapefruit	559					
12- 7-39	John Weatherford	292	Lucerne	Grapefruit	292					
12- 7-39	Ralph Smith	357	Dundee—Lake Hamilton	Grapefruit	357					
12- 8-39	Lewis Roberts	43	Davenport	Grapefruit	43					
12- 8-39	John Weatherford	133	Lucerne	Grapefruit	133					
12- 9-39	Lindsay & Hamric	327		Grapefruit						327
12-11-39	Tom Keegan	569	Dundee	Grapefruit	569					
12-11-39	Ralph Smith	123	Lake Hamilton	Grapefruit	123					
12-16-39	Lindsay & Hamric	167		Grapefruit						167
12-16-39	B. C. Cook	4418	Haines City	Grapefruit	4418					
12-29-39	B. C. Cook	324	Haines City	Grapefruit	324					
12-30-39	V. J. Martin	93	Davenport	Grapefruit	93					
12-16-39	John Weatherford	557	Florence Villa	Oranges		557				
12-14-39	John Weatherford	277	Florence Villa	Oranges		277				
1-13-40	J. A. Snively, Jr.	571	Haines City—Tower Lake	King Oranges	571					
1-15-40	V. J. Martin	69	Davenport	Grapefruit	69					
1-18-40	Bonita Fruit Sales Co.	336	Davenport	Grapefruit	336					
1-19-40	B. C. Cook	1529	Haines City	Grapefruit	1529					
1-26-40	W. V. Rewis	4	Davenport	King Oranges	4					
1-27-40	John Weatherford	949	Florence Villa	Oranges		949				
1-26-40	J. M. Crumbly	11	Davenport	Grapefruit	11					
1-26-40	J. M. Crumbly	28	Davenport	Grapefruit	28					

Grapefruit Distributors, Incorporated.

Fruit Purchases for the 1939-1940 Citrus Season.
Continued—Page 2.

Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Over 25 Mi. Boxes	Distance Unknown Boxes
2-14-40	Mrs. H. Evanhouse	788	Haines City	Grapefruit	788					
2-14-40	J. E. Breadwell	962		Oranges						962
2-15-40	B. C. Cook	1811	Haines City	Grapefruit	1811					
2-15-40	S. Z. Fields	373		Grapefruit						373
2-15-40	John Reidenbaugh	555	Haines City	Grapefruit	555					
2-15-40	C. W. Rosenski	69	Lake Alfred	Oranges	69					
2-15-40	H. B. Mabson	184	Davenport	Oranges	184					
2-15-40	Gentile Bros.	693		Oranges						693
2-15-40	J. A. Langley	2275	Haines City, etc.	Grapefruit				2275		
2-17-40	D. C. Duke	221		Grapefruit						221
2-19-40	S. Z. Fields	120		Grapefruit						120
2-21-40	A. D. Wells	464		Grapefruit						464
2-22-40	Jim Edwards	758	Lake Hamilton	Grapefruit	758					
2-22-40	S. Z. Fields	257		Grapefruit						257
2-22-40	J. E. Breadwell	214		Grapefruit						214
2-22-40	J. E. Breadwell	396		Oranges						396
2-24-40	B. C. Cook	5445	Haines City	Grapefruit	5445					
2-24-40	H. J. McKeown	596	Davenport	Grapefruit	596					
2-24-40	John Weatherford	127	Lucerne	Grapefruit	127					
2-24-40	Richard McLean	29	Davenport	Grapefruit	29					
2-24-40	S. Z. Fields	624		Grapefruit						624
2-26-40	S. Z. Fields	395		Grapefruit						395
2-26-40	S. Z. Fields	129		Grapefruit						129
2-27-40	A. D. Wells	801		Grapefruit						801
2-28-40	H. H. Joiner	124		Grapefruit						124
2-29-40	A. I. Barker	656		Grapefruit						656
2-29-40	D. C. Duke	117		Grapefruit						117
3- 1-40	B. C. Cook	3902	Haines City	Grapefruit	3902					
2-29-40	S. Z. Fields	297		Grapefruit						297
3- 1-40	Highland Park Service	744	Lake Wales	Grapefruit				744		
3- 1-40	J. A. Langley	221	Haines City, etc.	Grapefruit				221		
3- 1-40	Lake Wales Citrus Growers Assn.	1631	Lake Wales	Grapefruit				1631		

Grapefruit Distributors, Incorporated.

Fruit Purchases for the 1939-1940 Citrus Season.

Continued—Page 3.

Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Over 25 Mi. Boxes	Distance Unknown Boxes
3- 5-40	West Robinson Fruit Co.	122		Grapefruit						122
3- 6-40	D. C. Duke	107		Grapefruit						107
3- 6-40	A. I. Barker	140		Grapefruit						140
3- 9-40	B. C. Cook	3760	Haines City	Grapefruit	3760					
3- 9-40	S. Z. Fields	221		Grapefruit						221
3-11-40	A. D. Wells	119		Grapefruit						119
3-11-40	A. I. Barker	514		Grapefruit						514
3-14-40	A. I. Barker	1050		Grapefruit						1050
3-15-40	Roland Parker	212		Grapefruit						212
3-19-40	J. E. Breadwell	416		Grapefruit						416
3-19-40	J. E. Breadwell	78		Oranges						78
3-20-40	S. Z. Fields	251		Grapefruit						251
3-21-40	H. A. Monteith	114	Haines City—L. Hamilton	Oranges	114					
3-23-40	B. C. Cook	2132	Haines City	Grapefruit	2132					
3-23-40	Gateway Fruit Co.	134		Oranges						134
3-23-40	Ro-E-Gaines Fruit Co. Inc.	501	Clermont (South)	Oranges				501		
3-23-40	B. C. Cook	786	Haines City	Grapefruit	786					
3-25-40	H. A. Monteith	48	Haines City—L. Hamilton	Oranges	48					
3-27-40	H. A. Monteith	34	Lake Hamilton	Oranges	34					
3-30-40	J. E. Breadwell	376		Grapefruit						376
3-30-40	B. C. Cook	1894	Haines City	Grapefruit	1894					
4- 9-40	Charles Baker	329		Grapefruit						329
4-13-40	John Weatherford	724	Lucerne	Grapefruit	724					
4-13-40	B. C. Cook	470	Haines City	Grapefruit	470					
4-16-40	S. Z. Fields	126		Grapefruit						126
4-23-40	B. C. Cook	2053	Haines City	Grapefruit	2053					
4-27-40	Rooks & Zolkas	126	Haines City	Grapefruit	126					
4-29-40	B. C. Cook	5160	Haines City	Grapefruit	5160					
5-11-40	Rooks & Zolkas	2430	Haines City	Oranges	2430					
5-15-40	Rooks & Zolkas	621	Haines City	Oranges	621					
5-15-40	Cherokee Operating Co.	15251	Davenport	Oranges	15251					
5-15-40	C. H. Lindvall	106		Oranges						106
5-15-40	Harry Strohm	863	Davenport	Oranges	863					
5-15-40	V. J. Martin	3704	Davenport	Oranges	3704					
5-15-40	Gentile Bros.	1849		Oranges						1849

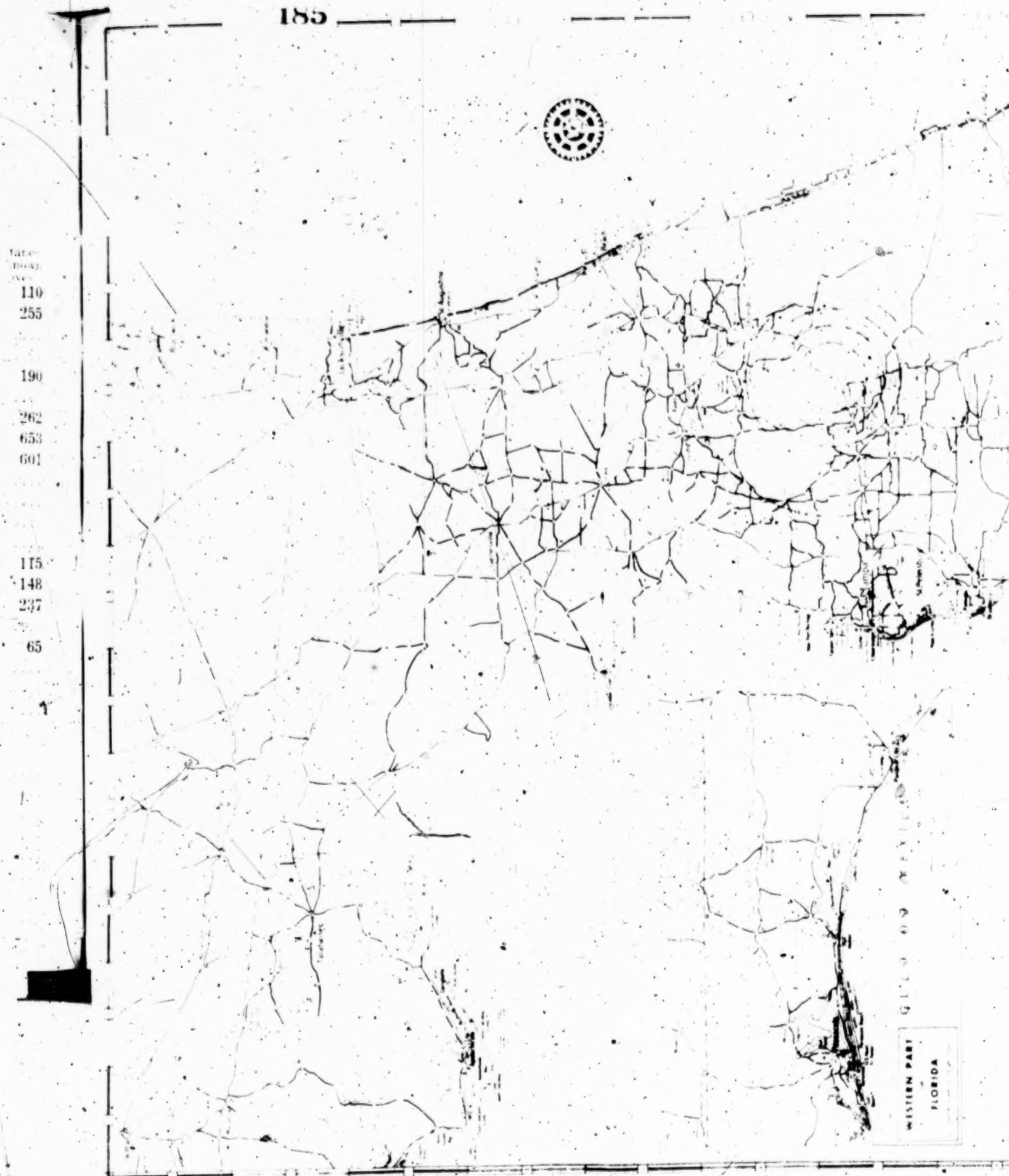
DEFT'S EXHIBIT H.

441 Civ.-T. Addison vs. Holly Hill Fruit Products. Filed in Evidence Dec. 2, 1942, Edwin R. Williams, Clerk.

Grapefruit Distributors, Incorporated.

Fruit Purchases for the 1938-1939 Citrus Season.

Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Over 25 Mi. Boxes	Distance Unknown Boxes
11-16-38	J. D. Fox & Cox	110		Early Grapefruit						110
11-17-38	J. H. Langley	255		Early Grapefruit						255
11-17-38	B. C. Cook	2356	Haines City	Early Grapefruit	2356					
11-22-38	B. C. Cook	2868	Haines City	Early Grapefruit	2868					
11-22-38	J. D. Fox & Cox	190		Early Grapefruit						190
11-23-38	Clay Binion	2940	Lake Alfred	Early Grapefruit	2940					
11-23-38	J. D. Fox & Cox	262		Early Grapefruit						262
11-26-38	J. D. Fox & Cox	653		Early Grapefruit						653
11-30-38	J. D. Fox	601		Early Grapefruit						601
11-30-38	Alfred King	67	Loughman	Early Grapefruit	67					
11-30-38	Clay Binion	4752	Griffin	Early Grapefruit				4752		
11-30-38	Clay Binion	235	Lake Alfred	Early Grapefruit	235					
12- 1-38	B. C. Cook	1990	Haines City	Early Grapefruit	1990					
12- 1-38	J. D. Fox & Cox	115		Early Grapefruit						115
12- 1-38	J. D. Fox & Cox	148		Early Grapefruit						148
12- 5-38	J. D. Fox & Cox	237		Early Grapefruit						237
12- 5-38	R. M. Bielling	42	Lake Hamilton	Early Grapefruit	42					
12- 5-38	J. D. Fox	65		Early Grapefruit						65
12-12-38	Julius Matsen (Blue Map)	181	Lake Hamilton	Early Grapefruit	181					
12-12-38	C. R. Erwin Estate	5206	Lake Hamilton	Early Grapefruit	5206					
12-14-38	J. L. Cayson	186	Winter Haven—Eloise	Early Grapefruit		186				
12-15-38	C. E. Rubush	56	Lake Hamilton	Early Grapefruit	56					
12-15-38	C. J. Matsen	30	Lake Hamilton	Early Grapefruit	30					
12-16-38	N. A. Mixon	1998	Lake Hamilton	Early Grapefruit	1998					
12-19-38	C. R. Erwin Estate	4868	Lake Hamilton	Early Grapefruit	4868					
12-23-38	Clay Binion	1146	Lake Alfred	Early Grapefruit	1146					
12-30-38	N. A. Mixon & Cox	945	Lake Hamilton	Early Grapefruit	945					
1-12-39	B. C. Cook	935	Haines City	Grapefruit	935					
1-20-39	A. M. Tilden	346	Haines City—Tower Lake	King Oranges	346					


110
255
190
262
653
601
115
148
237
65
WESTERN PART
FLORIDA

vidual shall be regarded as employed in the 'area of production' within the meaning of section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products,

(a) if he is engaged in such work on a farm and on agricultural or horticultural commodities produced exclusively on such farm, or

(b) if the agricultural or horticultural commodities are obtained by the establishment where he is employed from farms in the immediate locality and the number of employees in such establishment does not exceed seven.

That regulation remained in effect through April, 1939, when following a series of Administrative hearings, he promulgated, effective April 30, 1939, an additional paragraph to said Regulation 536.2, as follows:

"(e) with respect to perishable or seasonable, fresh fruits and vegetables, if he is engaged in handling, packing, storing, drying, preparing in their raw or natural state, or canning such products for market in an establishment which is located in the open country or in a rural community and which obtains all of its products from farms in its immediate locality. As used in this subsection (e) 'open country' or 'rural community' shall not include any city or town of 2,500 or greater population according to the 15th United States Census, 1930, and 'immediate locality' shall not include any distance of more than 10 miles."

On June 15, 1939, effective June 17, 1939, the Administrator again amended said Regulation, as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(a) if he performs these operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven, or

• • •

(d) if he performs those operations on materials all of which come from farms in the immediate locality of the establishment where he is employed and the establishment is located in the open country or in a rural community. As used in this sub-section (d), 'immediate locality' shall not include any distance of more than ten miles and 'open country' or 'rural community' shall not include any city or town of 2,500 or greater population according to the 15th United States Census, 1940."

On July 23, 1940, effective October 1, 1940, the Administrator again amended said Regulation as follows:

"II. An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, drying, preparing in their raw or natural state, or canning of perishable or seasonable fresh fruits or vegetables for market.

if he performs those operations on materials all of which come from farms in the general vicinity of the

establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten."

On March 12, 1941, effective April 1, 1941, the Administrator again amended said Regulation as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(a) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten, or

(b) with respect to dry edible beans, if he is engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this sub-section (b), 'first concentration pint' means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled or from other first concentration points, or

(c) with respect to Puerto Rican leaf tobacco, if he is engaged in handling, packing, storing, and drying such tobacco for market in an establishment which is a first concentration point for such tobacco. As used in this subsection (c), 'first concentration point' means a place where

such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing."

On October 6, 1941, effective January 5, 1942, the Administrator again amended said Regulation, as it is now currently in effect, as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(a) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where it is employed and the number of employees engaged in those operations in that establishment does not exceed ten, or

(b) with respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this subsection (b), 'first concentration point', means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled from other first concentration, or

(c) with respect to Puerto Rican leaf tobacco, if he is engaged in piling, bulking, or otherwise handling unstripped tobacco for market in an establishment which is

Fruit Purchases for the 1939-1940 Citrus Season.

Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Within 25 Mi. Boxes	Distance Unknown Boxes
11-16-39	E. Stone	49		Grapefruit						49
11-21-39	G. Stone	115		Grapefruit						115
11-22-39	B. C. Cook	4883	Haines City	Grapefruit	4883					
11-22-39	Lindsay & Hamric	193		Grapefruit						193
11-22-39	C. C. Spencer	313	Haines City	Grapefruit	313					
11-22-39	Perry Lloyd	125								125
12- 4-39	Tom Keegan	559	Dundee	Grapefruit	559					
12- 7-39	John Weatherford	292	Lucerne	Grapefruit	292					
12- 7-39	Ralph Smith	357	Dundee—Lake Hamilton	Grapefruit	357					
12- 8-39	Lewis Roberts	43	Davenport	Grapefruit	43					
12- 8-39	John Weatherford	133	Lucerne	Grapefruit	133					
12- 9-39	Lindsay & Hamric	327		Grapefruit						327
12-11-39	Tom Keegan	569	Dundee	Grapefruit	569					
12-11-39	Ralph Smith	123	Lake Hamilton	Grapefruit	123					
12-16-39	Lindsay & Hamric	167		Grapefruit						167
12-16-39	B. C. Cook	4418	Haines City	Grapefruit	4418					
12-29-39	B. C. Cook	324	Haines City	Grapefruit	324					
12-30-39	V. J. Martin	93	Davenport	Grapefruit	93					
12-16-39	John Weatherford	557	Florence Villa	Oranges		557				
12-14-39	John Weatherford	277	Florence Villa	Oranges		277				
1-13-40	J. A. Snively, Jr.	571	Haines City—Tower Lake	King Oranges	571					
1-15-40	V. J. Martin	69	Davenport	Grapefruit	69					
1-18-40	Bonita Fruit Sales Co.	336	Davenport	Grapefruit	336					
1-19-40	B. C. Cook	1529	Haines City	Grapefruit	1529					
1-26-40	W. V. Rewis	4	Davenport	King Oranges	4					
1-27-40	John Weatherford	949	Florence Villa	Oranges		949				
1-26-40	J. M. Crumbly	11	Davenport	Grapefruit	11					
1-26-40	J. M. Crumbly	28	Davenport	Grapefruit	28					
1-29-40	Holly Hill Fruit Products, Inc.	911	Davenport (L. Jacobs)	Oranges	911					
2- 7-40	B. C. Cook	1867	Haines City	Grapefruit	1867					
2- 7-40	L. L. Jacobs, Inc.	273	Davenport	Oranges	273					
2- 7-40	Haines City Citrus Growers Assn.	142	Haines City	Grapefruit	142					
2- 7-40	Gentile Bros.	199		Oranges						199
2- 7-40	Gateway Fruit Co.	315		Oranges						315
2- 8-40	Mrs. A. Warren	1559	Haines City	Grapefruit	1559					
2- 8-40	Mrs. T. J. McKnight	54	Davenport	Grapefruit	54					
2-12-40	J. D. Cox	571		Grapefruit						571
2-12-40	Lake Wales Citrus Growers Assn.	6041	Lake Wales	Grapefruit				6041		
2-12-40	S. Z. Fields	269		Grapefruit						269
2-14-40	John Weatherford	82	Lucerne	Grapefruit	82					
2-14-40	Paul Swanson	1437	Lake Hamilton	Grapefruit	1437					
2-14-40	John Weatherford	622	Florence Villa	Oranges		622				

Fruit Purchases for the 1939-1940 Citrus Season.

Continued—Page 2.

Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Over 25 Mi. Boxes	Distance Unknown Boxes
2-14-40	Mrs. H. Evanhouse	788	Haines City	Grapefruit	788					
2-14-40	J. E. Breadwell	962		Oranges						962
2-15-40	B. C. Cook	1811	Haines City	Grapefruit	1811					
2-15-40	S. Z. Fields	373		Grapefruit						373
2-15-40	John Reidenbaugh	555	Haines City	Grapefruit	555					
2-15-40	C. W. Rosenski	69	Lake Alfred	Oranges	69					
2-15-40	H. B. Mabson	184	Davenport	Oranges	184					
2-15-40	Gentile Bros.	693		Oranges						693
2-15-40	J. A. Langley	2275	Haines City, etc.	Grapefruit				2275		
2-17-40	D. C. Duke	221		Grapefruit						221
2-19-40	S. Z. Fields	120		Grapefruit						120
2-21-40	A. D. Wells	464		Grapefruit						464
2-22-40	Jim Edwards	758	Lake Hamilton	Grapefruit	758					
2-22-40	S. Z. Fields	257		Grapefruit						257
2-22-40	J. E. Breadwell	214		Grapefruit						214
2-22-40	J. E. Breadwell	396		Oranges						396
2-24-40	B. C. Cook	5445	Haines City	Grapefruit	5445					
2-24-40	H. J. McKeown	596	Davenport	Grapefruit	596					
2-24-40	John Weatherford	127	Lucerne	Grapefruit	127					
2-24-40	Richard McLean	29	Davenport	Grapefruit	29					
2-24-40	S. Z. Fields	624		Grapefruit						624
2-26-40	S. Z. Fields	395		Grapefruit						395
2-26-40	S. Z. Fields	129		Grapefruit						129
2-27-40	A. D. Wells	801		Grapefruit						801
2-28-40	H. H. Joiner	124		Grapefruit						124
2-29-40	A. I. Barker	656		Grapefruit						656
2-29-40	D. C. Duke	117		Grapefruit						117
3- 1-40	B. C. Cook	3902	Haines City	Grapefruit	3902					
2-29-40	S. Z. Fields	297		Grapefruit						297
3- 1-40	Highland Park Service	744	Lake Wales	Grapefruit				744		
3- 1-40	J. A. Langley	221	Haines City, etc.	Grapefruit				221		
3- 1-40	Lake Wales Citrus Growers Assn.	1631	Lake Wales	Grapefruit				1631		
3- 1-40	J. E. Breadwell	1141		Grapefruit						1141
3- 1-40	J. E. Breadwell	217		Oranges						217
3- 1-40	Gentile Bros.	734		Oranges						734
3- 1-40	D. C. Duke	102		Grapefruit						102
3- 1-40	S. W. Speer	112		Grapefruit						112
3- 1-40	A. I. Barker	131		Grapefruit						131
3- 1-40	John Weatherford	145	Florence Villa	Oranges		145				
3- 1-40	N. H. Stiles	132	Haines City	Grapefruit	132					
3- 1-40	H. B. Mabson	200	Davenport	Oranges	200					
3- 1-40	West Robinson Fruit Co.	235		Grapefruit						235

Fruit Purchases for the 1939-1940 Citrus Season.

Continued—Page 3.

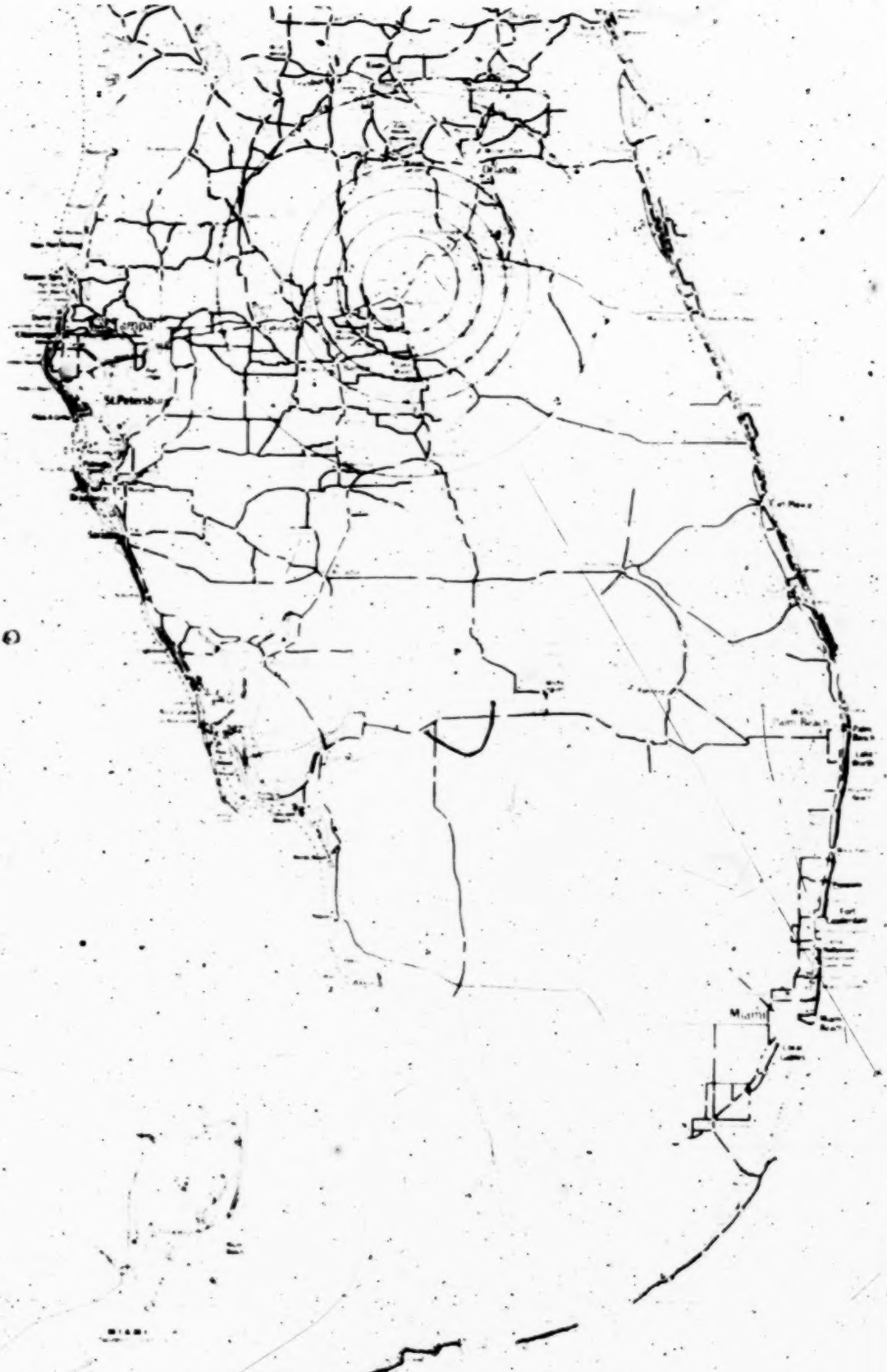
Date	Name	No. of Boxes	Location of Groves	Variety	Within 10 Mi. Boxes	Within 15 Mi. Boxes	Within 20 Mi. Boxes	Within 25 Mi. Boxes	Over 25 Mi. Boxes	Distance Unknown Boxes
3- 5-40	West Robinson Fruit Co.	122		Grapefruit						122
3- 6-40	D. C. Duke	107		Grapefruit						107
3- 6-40	A. I. Barker	140		Grapefruit						140
3- 9-40	B. C. Cook	3760	Haines City	Grapefruit	3760					
3- 9-40	S. Z. Fields	221		Grapefruit						221
3-11-40	A. D. Wells	119		Grapefruit						119
3-11-40	A. I. Barker	514		Grapefruit						514
3-14-40	A. I. Barker	1050		Grapefruit						1050
3-15-40	Roland Parker	212		Grapefruit						212
3-19-40	J. E. Breadwell	416		Grapefruit						416
3-19-40	J. E. Breadwell	78		Oranges						78
3-20-40	S. Z. Fields	251		Grapefruit						251
3-21-40	H. A. Monteith	114	Haines City—L. Hamilton	Oranges	114					
3-23-40	B. C. Cook	2132	Haines City	Grapefruit	2132					
3-23-40	Gateway Fruit Co.	134		Oranges						134
3-23-40	Ro-E-Gaines Fruit Co. Inc.	501	Clermont (South)	Oranges				501		
3-23-40	B. C. Cook	786	Haines City	Grapefruit	786					
3-25-40	H. A. Monteith	48	Haines City—L. Hamilton	Oranges	48					
3-27-40	H. A. Monteith	34	Lake Hamilton	Oranges	34					
3-30-40	J. E. Breadwell	376		Grapefruit						376
3-30-40	B. C. Cook	1894	Haines City	Grapefruit	1894					
4- 9-40	Charles Baker	329		Grapefruit						329
4-13-40	John Weatherford	724	Lucerne	Grapefruit	724					
4-13-40	B. C. Cook	470	Haines City	Grapefruit	470					
4-16-40	S. Z. Fields	126		Grapefruit						126
4-23-40	B. C. Cook	2053	Haines City	Grapefruit	2053					
4-27-40	Rooks & Zolkas	126	Haines City	Grapefruit	126					
4-29-40	B. C. Cook	5160	Haines City	Grapefruit	5160					
5-11-40	Rooks & Zolkas	2430	Haines City	Oranges	2430					
5-15-40	Rooks & Zolkas	621	Haines City	Oranges	621					
5-15-40	Cherokee Operating Co.	15251	Davenport	Oranges	15251					
5-15-40	C. H. Lindvall	106		Oranges						106
5-15-40	Harry Strohm	863	Davenport	Oranges	863					
5-15-40	V. J. Martin	3704	Davenport	Oranges	3704					
5-15-40	Gentile Bros.	1849		Oranges						1849
	Total	107704			75746	2550		11413		17995
	Dumps	108								
	Holly Hill Records	107596								

11-30-38	Clay Binion	[illegible]	[illegible]	Early Grapefruit	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11-30-38	Clay Binion	235	Lake Alfred	Early Grapefruit	235						
12- 1-38	B. C. Cook	1990	Haines City	Early Grapefruit	1990						
12- 1-38	J. D. Fox & Cox	115		Early Grapefruit							115
12- 1-38	J. D. Fox & Cox	148		Early Grapefruit							148
12- 5-38	J. D. Fox & Cox	237		Early Grapefruit							237
12- 5-38	R. M. Bielling	42	Lake Hamilton	Early Grapefruit	42						
12- 5-38	J. D. Fox	65		Early Grapefruit							65
12-12-38	Julius Matsen (Blue Map)	181	Lake Hamilton	Early Grapefruit	181						
12-12-38	C. R. Erwin Estate	5206	Lake Hamilton	Early Grapefruit	5206						
12-14-38	J. L. Cayson	186	Winter Haven—Eloise	Early Grapefruit		186					
12-15-38	C. E. Rubush	56	Lake Hamilton	Early Grapefruit	56						
12-15-38	C. J. Matsen	30	Lake Hamilton	Early Grapefruit	30						
12-16-38	N. A. Mixon	1998	Lake Hamilton	Early Grapefruit	1998						
12-19-38	C. R. Erwin Estate	4868	Lake Hamilton	Early Grapefruit	4868						
12-23-38	Clay Binion	1146	Lake Alfred	Early Grapefruit	1146						
12-30-38	N. A. Mixon & Cox	945	Lake Hamilton	Early Grapefruit	945						
1-12-39	B. C. Cook	935	Haines City	Grapefruit	935						
1-20-39	A. M. Tilden	346	Haines City—Tower Lake	King Oranges	346						
1-23-39	C. D. Hedrick	78	Loughman	Early Grapefruit	78						
1-23-39	H. B. Mabson	76	Loughman	Early Grapefruit	76						
2-21-39	C. A. Stewart & Co.	1119	Florence Villa	Valencia Oranges		1119					
2-21-39	Holly Hill Coop. Citrus Assn.	11	Davenport	Pineapple Oranges	11						
2-31-39	W. A. Stanford	200	Lake Alfred	Pineapple Oranges	200						
2-37-39	C. A. Stewart & Co.	230	Lake Alfred & F. Villa	Valencia Oranges	68	162					
3- 6-39	J. L. Clark	54		Valencia Oranges							54
3-11-39	J. L. Clark	127		Valencia Oranges							127
3-11-39	L. R. Crews	251		Valencia Oranges							251
3-17-39	A. I. Mansfield	132	Lakeland	Oranges				132			
4- 4-39	Holly Hill Coop. Citrus Assn.	103	Davenport	Valencia Oranges	103						
4- 4-39	International Fruit Corp.	126	Lucerne	Pineapple Oranges	126						
4- 4-39	Chester C. Fosgate Co.	177	Davenport	Pineapple Oranges	177						
4-27-39	B. C. Cook	5429	Haines City	Early Grapefruit	5429						
5- 4-39	B. C. Cook	1572	Haines City	Early Grapefruit	1572						
5- 4-39	Tom Keegan	261	Dundee	Early Grapefruit	261						
5- 8-39	John Avery	1093	Lake Hamilton	Early Grapefruit	1093						
4- 8-39	C. R. Erwin Estate	6404	Lake Hamilton	Early Grapefruit	6404						
5- 8-39	Jesse Roberts	823	Haines City	Early Grapefruit	823						
5- 8-39	Peter Jordan	4104	Davenport	Early Grapefruit	4104						
6- 1-39	W. G. Colvin	86	Davenport	Early Grapefruit	86						
6- 1-39	John H. Avery	422	Lake Hamilton	Early Grapefruit	422						
6-24-39	B. C. Cook	125	Haines City	Early Grapefruit	125						
3-30-39	B. C. Cook	3532	Haines City	Early Grapefruit	3532						
	Total	60318			50899	1467		4884		3068	
	Dumps, Rots, etc.	633									
	Net Total	59685									

GULF OF MEXICO

1935
STANDARD OIL
Road Map
FLORIDA
STANDARD OIL COMPANY

Legend



a first concentration point for such tobacco; provided that employees engaged in stripping tobacco or engaged in piling, bulking, or otherwise handling stripped tobacco shall not be deemed to fall within this definition. As used in this subsection (c), 'first concentration point' means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing.

VII. In and throughout the said two seasonal periods of operation, the establishment of the defendant did not obtain all of its agricultural and horticultural commodities or materials from farms in the "immediate locality" or "general vicinity" of the said establishment as defined by the Administrator. An appreciable portion thereof came from a distance beyond the range of usual farm travel. The general vicinity of defendant's establishment was not sparsely settled, there being several towns and communities within a radius of less than ten miles. Thus, considerable fruit was canned and processed in the defendant's establishment during said season which came from the neighborhood of Haines City, which is within four miles and has several commercial canning plants operating in competition to defendant's establishment. Also considerable fruit was canned and processed in the defendant's establishment during the seasons in controversy, coming from the neighborhood of communities as far away from Davenport as Lake Wales—20 miles—Babson Park, several miles more than 20, Dundee 14 miles, Loughman 7 or 8 miles. Much of this fruit was hauled past other canning factories to reach the defendant's establishment.

VIII. In and during said two seasonal periods of operation, the establishment of the defendant is not located

in the "open country" or a "rural community", as defined by the Administrator in his said several definitions, because there was within the range of usual farm travel, at a point not more than four miles away, a town of more than 2500 population according to the applicable United States Census.

IX. There was practically no testimony showing the percentage of the fruit processed by the defendant establishment which was procured from groves located at a distance of more than ten miles by the shortest road haul from the establishment; almost all of the testimony on the distance of the point of origin of the commodities processed by said establishment during said two seasonal periods had reference to a ten mile radius, "as the crow flies".

X. The evidence discloses that the defendant is not an establishment operated by the farmers raising the commodities processed, and that the processing is not done by the farmers through the use of their own farm labor on their own farms. On the contrary, although its membership consisted of fruit growers owning groves in two certain townships in Polk County, Florida, the defendant accepted a considerable portion of its commodities from groves of non-members and, in fact, processed many thousands of boxes of fruit delivered to the canning plant by a speculative non-member, the Grapefruit Distributors, Inc., a corporation. The employees of the defendant were not hired by the members, nor were they farm labor. On the contrary, they were hired by the defendant corporation and did no farm or agricultural labor. They were simply industrial employees. The defendant corporation was not itself engaged in agricultural or horticultural labor or work. It was a commercial industrial concern entitled to earn a reasonable profit from canning fruit.

Conclusions of Law.

The Court concludes as matters of law as follows:

A. If the several applicable definitions of the phrase "area of production" as made by the Administrator, are void, as claimed in the Fifth Defense, as amended, then the defendant is not entitled to the total exemption given by Section 13 (a) (10) of the Fair Labor Standards Act of 1938, because, as stated in the case of: Redlands Foothill Groves v. Jacobs (1940, U. S. Dist. Ct. Cal.) 30 Fed. Supp. 995, at 1006, where Congress says that the Administrator is to define the "area of production" if the Administrator's definition is wrong, the defendant cannot claim exemption until the Administrator re-defines the phrase so as to exclude his establishment. The Courts cannot define the phrase "area of production" for the Administrator. Moreover, this is not a case such as the case of Fleming v. Farmers Peanut Co. (C. C. A. 5th) 128 Fed. (2nd) 404 where prospective relief in the nature of a discretionary injunction is asked. Either the plaintiffs are entitled to the damages they ask or they are not, and they cannot be deprived of a recovery by allowing a total exemption to the defendant if same did not exist when the plaintiffs' rights of action accrued.

B. If, on the other hand, said several definitions by the Administrator are valid, then the Court finds that under the Fifth Defense as amended and as pleaded and proved, the defendant has not proved itself entitled to the total exemption claimed under Section 13 (a) (10) of the Fair Labor Standards Act of 1938, in, for, or during any of the periods involved in this controversy.

C. Having in view the fact that the purpose of the Fair Labor Standards Act of 1938, as disclosed by the

debates in Congress on the passage of the Act was to raise sub-standard labor conditions in industrial plants, the Court is of the opinion that as applied to defendant's establishment each of the Administrator's several definitions of the phrase "area of production" is a valid definition.

D. In allowing the total exemption given by Section 13 (a) (10) of said Act, the intent of Congress, as disclosed by the debates in Congress on the passage of the Act to exempt the farmer in canning or "first process" operations done on his own farm, or in his own neighborhood, through his own farm labor, because, at the time of the passage of the Act, the farmer could not afford to pay his farm labor the wages paid in industry and, further, farm labor received some of its compensation in board and "keep". Each component element of each of the Administrator's definitions of "area of production", namely, the restriction of the number of employees, the provision that the commodities or materials are to be obtained by the establishment from the "immediate vicinity" or "general vicinity" of the establishment, and the provision that the establishment must be located in the "open country," or a "rural community" as defined by the Administrator is properly a part of a definition drawn to exempt farm labor but not industrial labor. Certainly, since the main purpose of the Act was to raise sub-standard labor conditions in industry, the purpose of said total exemption given by Section 13 (a) (10) could not have been to exempt commercial industrial establishments, such as defendants' canning plant, which accepted commodities from such non-members as Grapefruit Distributors, Inc. and which employed a great many industrial employees hired by the defendant corporation and not by its members individually.

E. It is true that since this suit was filed the appeal in the case of Fleming Administrator versus Farmers Peanut Company (37 Fed. Supple. 628) has been decided by our Fifth Circuit Court of Appeals, 128 Fed. 2nd 104. This Court has given due consideration to this decision. It is true that the opinion in that case rejects the number element of the Administrator's definitions as not a true execution of the power given to define, but the factual circumstances of the Farmers Peanut case as disclosed in the District Court opinion are so different from these existing in this present case that the undersigned Judge hesitates to believe that the said Circuit Court of Appeals was intending, by its opinion in the Farmers Peanut case, to create a precedent that would exempt such industrial establishments as the defendant's canning plant.

F. The Court concludes, as a conclusion of law that the haulage provision of the Administrator's several definitions defining "immediate locality" as "not including any distance of more than ten miles" means "more than ten miles" by the shortest available road route, but not a radius distance "as the crow flies" from the plant.

G. The Court concludes that the terms "open country" and "rural community" which are defined by the Administrator as not including any city or town of 2,500 or greater population, according to the 15th United States Census, 1930, or the 16th United States Census, 1940, would exclude the town of Davenport, since a town of more than 2,500 such as Haines City, is located within the "immediate locality" or "general vicinity" of the establishment.

H. The Fifth Defense, as amended, necessarily admits, because it does not deny, that the employees employed by the defendant's establishment were employed during

the periods in controversy at less than the legal minimum wages fixed by Section 6 of the Act, and were not paid time and a half overtime as required by Section 7 (a) of the Act. Therefore, the defendant's establishment was, during said periods, being operated under the sub-standard labor conditions, which it is the purpose of said Act to remedy. With these admissions in view, the total exemption which the Congress intended by Section 13 (a) (10) to give farmers employing their own farm labor on their own farms or in neighborhood establishments is not properly applicable to the defendant's establishment.

I. The Court is of the opinion that, where an industrial canning establishment is, as here, engaged in handling commodities for non-members, in direct competition with other competing industrial canning establishments, engaged in the same type of canning business, and located within the "immediate locality" and "general vicinity" of the defendant's establishment as defined by the Administrator, it is not within the idea of a canning plant located on and used for an individual farm, or of a farmers' neighborhood establishment, operated by the farmers themselves with their own farm labor for the purpose of canning commodities or materials grown on farms in the immediate locality or general vicinity of the canning or processing establishment such as the Court conceives was intended to be exempted by Section 13 (a) (10) of the Act and by the several definitions of the said exemption promulgated by the Administrator. Such a total exemption was not intended to permit such commercial industrial establishments as defendant's to maintain sub-standard labor conditions in violation of the main purpose of the Fair Labor Standards Act of 1938, while requiring all others like commercial industrial establishments to comply with the Act.

Conclusion.

On the basis of the above findings of fact, and the above conclusions of law, the Court will enter an appropriate judgment, striking the said Fifth Defense, as amended.

This the 26th day of January, A. D. 1943.

WILLIAM J. BARKER,
U. S. District Judge.

On January 26, 1943, the Court likewise entered his ORDER ON PLEADINGS in the words and figures as follows:

208 (Title Omitted.)

And now this day this cause coming on to be heard upon due notice, upon the sufficiency of the Fifth Defense as amended, after the taking of testimony on December 2, 1942, as to the said defense and the Court having heard the argument of counsel for the respective parties and being fully advised in the premises, and having rendered his findings of fact and conclusions of law with regard to the sufficiency of the said Fifth Defense as amended and having concluded that said Fifth Defense as amended is insufficient in point of law as well as in fact;

It Is Considered by the Court that said Fifth Defense as amended be and it is hereby stricken pursuant to the motion filed by the plaintiffs addressed thereto.

And Thereupon, counsel for the plaintiffs having applied to the Court to enter a ruling on the plaintiffs' motion to strike the Third and Fourth Defenses of the answer, which ruling the Court reserved in its order of the 11th of

June, A. D. 1942, and the defendant tendering and being permitted to file an amended Fourth Defense and agreeing that plaintiffs' said motion to strike be applied to said amended Fourth Defense, thereupon the Court finds, as a matter of law, as follows:

(a) The Third Defense is one setting up a claim of exemption of 14 work weeks in the aggregate in a calendar year under Section 7-b-3 of the Fair Labor Standards Act of 1938. And the Fourth Defense is one setting up a claim of exemption during a period or periods of not more than 14 weeks in the aggregate in any calendar year under Section 7-c of said Act.

(b) The Court finds that Section 7-h-3 merely relates to exemption from paying compensation for overtime employment and that in order for the defendant to be entitled to a claim of exemption under said Section 7-b-3, the industry must have been found by the Adminstrator to be of a seasonal nature. The Court further finds that the Administrator did not find the citrus industry to be of a seasonal nature until August 24, 1940, which was a date subsequent to all dates and periods in controversy here, (see Federal Register of August 24, 1940).

(c) With further reference to said exemption as set forth in the Third Defense of the original answer filed by the defendant under Section 7-b-3, the Court is of the opinion that said exemption did not exist until such finding by the Administrator and that the finding could not be retroactive. Consequently the right of the defendant to claim this exemption under Section 7-b-3 is disproved by the Third Defense in which said claim is made.

(d) The Court finds that this exemption (Section 7-b-3) is only available to the defendant if the defendant

has paid its employees compensation at the rate of not less than time and a half the regular rate at which they were employed for a period or periods of more than 12 hours in any work day and not less than 56 hours in any work week and the Third Defense does not set up that the employer, namely, the defendant herein, has complied with this condition of the said partial exemption claimed.

(e) Therefore, the Court finds that the Third Defense which claims a partial exemption of 14 weeks under Section 7-b-3 of the said Act is insufficient in point of law.

(f) With reference to the amended Fourth Defense which claims a 14 week partial exemption under Section 7-c of the said Act, the Court finds that this applies to a period or periods of not less than 14 work weeks in the aggregate in any calendar year in the canning of perishable or seasonal fresh fruits and vegetables or in the first processing within the "area of production" as defined by the Administrator of any agricultural or horticultural commodities during the season's operations. It does not appear from the Fourth Defense that the defendant at any time prior to the institution of this suit designated any period or periods of not more than 14 weeks in the aggregate in any calendar year involved in the controversy. In fact, the Fourth Defense does not deny, and, therefore, admits the charges of the complaint as amended that the defendant violated the minimum wage and maximum hour provisions of the Fair Labor Standards Act of 1938, apparently relying upon a claim of total exemption under Section 13 (a) (10). Any claim to said partial exemption allowed by Section 7-c is inconsistent with a claim of total exemption under Section 13 (a) (10), such as is pleaded in the amended Fifth Defense. Moreover, since employment is a matter of contract, it is reasonable to construe

the designation of the particular fourteen work-weeks to be exempted to be a matter for agreement between the employer and the employee, and the Fourth Defense does not aver any such joint designation. Moreover, the employer may elect to claim the partial exemption allowed by Section 7-c where applicable and where the employer, as here, appears to have settled with the plaintiff for the weeks worked during the two seasons in controversy, without claiming the partial exemption under Section 7-c, it is not now entitled to re-open the account and claim same now.

Therefore, the Court finds that the defendant is not entitled to the partial exemption claimed in the Fourth Defense on account of its canning operations or on account of the first proceeding within the area of production as defined by the Administrator.

Thereupon, it is considered by the Court that:

A. The said Third and amended Fourth Defenses being each of them severally insufficient in point of law, the motion of the plaintiffs to strike the said third and fourth defenses is severally granted.

B. The First Defense being by way of demurrer to the complaint as finally amended and the Court having held that the complaint as finally amended to be good in point of law, the cause will now proceed upon the taking of testimony on the issues raised by the Second Defense as amended on July 1, 1942.

Done and Ordered at Orlando, Florida, on this the 26th day of January, A. D. 1943.

W. J. BARKER,
District Judge.

On February 15, 1943, plaintiffs filed MOTION FOR SUMMARY JUDGMENT UNDER RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE in words and figures as follows:

212 (Title Omitted.)

Come now the plaintiffs in the above styled cause, and show unto this Honorable Court that except as to the amount of damages there is no genuine issue as to any material fact and that moving parties are entitled to a judgment as a matter of law, and further show unto this Honorable Court that there is no merit whatever in truth and in fact in the Second Defense filed by the Defendant-Company herein and that none of the denials in said Second Defense of any of the averments of the amended complaint as finally amended are in point of fact true and that said defense is a sham defense. Thereupon, Plaintiffs move this Court under Rule 56 of the Federal Rules of Civil Procedure for a summary judgment against the defendant-Company on said Second Defense.

The foregoing Motion for Summary Judgment was at the pre-trial conference amended to apply only to the plaintiffs named in the final judgment in this case.

On February 24, 1943, the defendant filed a PETITION FOR REHEARING in words and figures as follows:

213 (Title Omitted.)

Comes now the defendant, by its undersigned attorneys, and moves the Court for a rehearing and reargument on the order entered by this Court on January 26, 1943, and the findings of fact and law on which said order was based, on the following grounds:

1. The findings of fact are not warranted by the testimony adduced on the issue raised by the amended Fifth Defense on the following, among other points:

(a) The testimony shows conclusively that the defendant obtained his agricultural and horticultural commodities from farms in the immediate locality or general vicinity of the said establishment as defined by the Administrator during the period or periods of time in which the several definitions were applicable.

(b) An appreciable portion of the agricultural and horticultural commodities did not come from a distance beyond the range of usual farm travel.

(c) The third paragraph of the amended Fifth Defense filed by this defendant was admitted by counsel for the plaintiffs and the findings of fact are inconsistent with said third paragraph.

(d) The third paragraph of the Fifth Defense admitted to be true, among other things alleged,

"The result of this integrated development of citrus is that the usual range of farm travel is great, many producers owning grove properties more than 100 miles distant, but belonging to a cooperative or customarily dealing with a single independent handler in proximity to one of such grove properties, and producers and handlers alike are competitors and neighbors, meeting in common markets and under common conditions to bid against one another for a single labor supply or a single price or to exchange solutions of their common problems though their groves or their establishment may be more than 100 miles apart",

and the testimony shows none of the agricultural or horticultural commodities were obtained from as far as a distance of 100 miles and, yet the Court made a finding that "an appreciable portion thereof came from a distance beyond the range of farm travel".

(e) The Court finds that the establishment of the defendant is not located in the "open country" or "rural community" for the reason that there is within a distance of four miles a town of 2500 population which is an improper manner of determining whether an establishment is located in an open country or a rural community.

(f) The Court erred in determining the haul of fruit by holding that the criterion should be "road miles" instead of "as the crow flies".

(g) The Court erred in determining whether the defendant was within the "area of production" dependent upon whether or not the services performed by the plaintiff were "farm labor" which is covered by another section of the Fair Labor Standards Act and has no bearing whatsoever on the issue raised by the Fifth Defense.

(h) The Court erred in finding "it is a commercial industrial concern entitled to earn a reasonable profit from canned fruit" because the evidence clearly shows the same to be a cooperative organized and existing under the laws of Florida applicable to cooperatives.

2. The Court erred in the conclusions of law in the following, among other particulars:

(a) The Court concluded as a matter of law that if the several applicable definitions of "area of production" are void, the defendant is not entitled to the exemption given by Section 13(a)(10) of the Fair Labor Standards Act.

(b) The Court erred in concluding as a matter of law that the defendant has not proved it is entitled to the exemption under section 13 (a) (10) in, for, or during any of the periods involved in this controversy.

(c) The Court erred in concluding as a matter of law that each and every of the applicable definitions of the Administrator of "area of production" is a valid definition.

(d) The Court erred in concluding as a matter of law that the services of the plaintiff were not exempt from the Act because the said services were "farm labor", overlooking the fact that the defendant made no claim of exemption for the services as "farm labor" or "agricultural labor".

(e) The Court erroneously held that the test for the haul is "road mileage" instead of "as the crow flies".

(f) The Court concludes as a matter of law that the defendant's establishment is not within the "open country" or "rural community" because there is within the "immediate locality' 'or "general vicinity" of the establishment a town of more than 2500 which is contrary to the definition and interpretations of the Administrator.

(g) The Court erroneously held that the defendant had admitted violations of Sections 6 and 7 of the Act because the Fifth Defense did not deny these violations but overlooked the fact that in and by the Second Defense the defendant had denied the violations and the Fifth Defense was an affirmative defense.

3. The Court erroneously found as a matter of law that the canning of citrus in the State of Florida was not seasonal because the Administrator had not determined that it was seasonal until August 24, 1940.

4. The canning of citrus is seasonal and was seasonal during all the periods in controversy in this cause and this defendant cannot be deprived of the benefits of Section 7(b)(3) of the Act because the Administrator failed to perform his duties until a time subsequent to the controversies set forth herein.

5. The Court committed error in connection with the third defense of this defendant in finding as a matter of law that this defendant was not entitled to the benefits of Section 7(b)(3) and could not be claimed by this defendant as to each of the employees, overlooking the decision of the Circuit Court of Appeals of the Seventh Circuit in *Walling vs. Swift & Company*, 131 Fed. (2d) 249.

6. No testimony has been taken under the Third Defense and the Court committed error in striking said Third Defense on the ground that the defendant did not allege in said defense that it had paid its employees compensation at the rate of not less than time and a half the regular rate for a period or periods of more than 12 hours in any work day and not less than 56 hours in any workweek.

7. The Court erred in finding as a matter of law that the defendant was not entitled to claim the exemption under section 7(c) of the Act and in erroneously injecting into the issue the question of "area of production" which has no bearing whatsoever on the issues set up by the Fourth Defense.

8. The Court erred in striking the Fourth Defense because the same was inconsistent with the Fifth Defense overlooking the provisions of the rules of practice of this Court and the case law applicable.

9. The Court erred in striking the Fourth Defense on the ground that the defendant and the employees had not

jointly designated the exempt weeks under Section 7(c) overlooking the fact that it is not necessary for a joint designation of the exempt weeks under the law or any interpretation by the Administrator.

10. The Court in striking the Fourth Defense on the ground that the defendant had not theretofore designated the exempt weeks under Section 7(c) overlooked the interpretations of the Administrator of the Wage and Hour Division with reference thereto.

11. The Court overlooked and failed to follow the decision of the Circuit Court of Appeals of the Fifth Circuit in the case of *Fleming vs. Farmers Peanut*, 127 Fed. (2d) 404, which announced the law binding upon this Court.

12. In holding that the defendant was not entitled to apply the exempt weeks under section 7(c) because the defendant had not theretofore designated said weeks as exempt under said section, the Court overlooked the fact that in the case of Lake Wales Citrus Growers vs. Roy L. Janes, et al., lately pending in this Court on or about June 19, 1939, there was issued a temporary restraining order restraining the Administrator of the Wage and Hour Division and the United States Attorney from enforcing said Act and that thereafter on July 8, 1939, a preliminary injunction was issued likewise enjoining the enforcement of said Act to the citrus canners of Florida, including the defendant, which injunction remained in full force and effect until August 1940, which is subsequent to the periods in controversy set forth in the amended complaint; that therefore during the time that said restraining order and injunction were in force and effect this defendant rightfully believing it was not subject to the provisions of the Fair Labor Standards Act did not designate the exempt weeks under section 7(c)

and was not obligated so to do; a certified copy of the opinion of the District Court having heretofore been offered in evidence during the taking of testimon n the issue raised by the Fifth Defense; that this Court should take judicial knowledge of the proceedings in said case which was lately pending in this Court and that the same constitute a valid reason for not designating said exempt weeks by this defendant during said periods of time.

The above petition for rehearing was denied by the Court in the pre-trial conference order hereinafter set out.

On March 12, 1943, the Court entered his ORDER ON THE PRE-TRIAL CONFERENCE held February 24, 1943, said order being in words and figures as follows:

220 (Title Omitted.)

This matter came on for Pre-trial conference pursuant to notice of Plaintiffs, and thereupon the following proceedings were had:

1. The Defendant presented Petition for Rehearing. (Thereupon said Petition was read to the Court.)

The Court:

The Court will permit the filing of the Petition and deny it.

The Defendant thereupon filed Objections to Interrogatories heretofore propounded by the Plaintiffs and by agreement of counsel consideration thereof was deferred.

2. The Defendant presented to the Court Motion for leave to file Additional Defenses, together with such Additional Defenses.

(Thereupon, said Additional Defenses were read to the Court.)

Mr. Reeves:

With reference to the Second Additional Defense which is offered at this time, the Defendant announces that the evidence which the Defendant proposes to offer under said defense is substantially the same testimony as was offered under the fifth defense; that in addition the Defendant proposes to prove under said second additional defense, by substantially the same testimony broken down to show each week's operation, that as to each and every work week Defendant operated within the area of production as defined by the applicable regulation.

Thereupon, the Court granted said Motion and allowed said additional defenses to be filed and it was agreed by counsel that the Plaintiff's Motion to Strike addressed to the Fifth Amended Defense filed by the Defendant should be treated as re-filed and addressed to the said additional defenses and each of the same severally.

The Motion to Strike was thereupon argued and the Court granted the Motion to strike each of said several additional defenses severally.

Thereupon, counsel for Plaintiffs presented a motion for summary judgment and requested that the same be granted as to the claims of all of the hour hands included in the named Plaintiffs and listed in Exhibit No. 1 to the original Complaint, as follows:

Albert Austin, Nannie Brooks, Sallie Baker, John Baker, Luther Black, Archie Boyd, Norman Bright, Everett Bronson, Lonnie Bronson, James M. Bryant, Edgar Campbell, Edward Campbell, Louise Campbell, Louella Campbell,

Buddy Cliatt, Ramon Collins, Kirby Douglas, J. Edd Duckworth, Haldean Fowler, Nellie Granger, Leroy Green, John Hardin, Hattie C. Jones, K. Kersey, Kirby Lanier, Bill Laurence, Ernestine C. Lyles, Harold Munson, Sarah J. McPhee Murphy, Valeria Phinney, Louis F. Pierson, Rosa Lee Prevatt, Susie Prevatt, J. L. Robinson, W. R. Roland, William Rigdon, T. B. Sly, Ernest Streetman, J. W. Streetman, Ruth B. Streetman, Fannie Thompson, Madeline Thompson, Lewis Usery, J. H. Wallis, Dallas Wooten, J. M. Wrenn, Dee Wooten.

Thereupon, for the purpose of dealing with said Motion for summary judgment at this time counsel for Defendant agreed that as to the hour hands just named Defendant would waive any issues raised by the second defense.

Thereupon, the Court finds and holds that in this case there are two separate and distinct groups of Plaintiffs:

1. Those who were employed by the hour; and,

2. Those who were employed on piece work;

and the Court is of the opinion that the two groups of claims are separate and distinct, and that inasmuch as there remains under the pleadings and stipulations of counsel no genuine issue of fact with reference to the claim of the hour hands, separate, final judgment should be taken and entered at this time on the Plaintiffs' motion for summary judgment under Rule No. 54 with regard to said hour hands. However, the Court is of the opinion that, with regard to the claims of the piece workers, there are genuine issues of fact which should be determined in a separate trial.

The Court therefore orders that final judgment be entered at this time on the claims of the said hour workers.

and that the case shall proceed on the claims of the piece workers.

Thereupon, counsel for Plaintiffs requested the Court to award and allow a reasonable attorneys' fee for the services of the attorneys for the hour hands in the prosecution of this suit to final judgment. Thereupon, it was agreed that the amount thereof should be fixed by the Court without the taking of any testimony because the Court is thoroughly familiar with the nature and extent of the attorneys' services to be compensated for.

Thereupon, counsel for Plaintiffs moved the Court to designate a capable person to examine the books and records of the Defendant and ascertain the exact amounts claimed by each hour hand for the periods involved in order that these amounts might be incorporated in the judgment, the compensation for the services of such auditor to be taxes as costs.

Thereupon, the Court granted the motion and ordered that R. C. Pribble, of Orlando, Florida, be hereby appointed as said auditor, and instructed to proceed immediately to gather the required information and report back to the Court.

Thereupon, it is ordered that this case proceed in accordance with the above action taken at this Pre-trial conference.

Done and Ordered at Orlando, Florida, in said District, this the 24th day of February, A. D. 1943.

WILLIAM J. BARKER,
United States District Judge.

On the 9th day of April, the Court entered its FINAL JUDGMENT in words and figures as follows:

223 (Title Omitted.)

This cause coming on this day on motion to enter final judgment for the hereinafter named plaintiffs on the pleadings and evidence in this cause, jury trial having been waived, and the Court having been fully advised in the premises does find as follows:

1. The Defendant filed in this cause five defenses and, thereafter, filed certain amendments and that the Court has heretofore held said defenses insufficient and stricken the same save and except the second defense, which defense has heretofore been waived by the defendant as to the claims of the hereinafter named plaintiffs, findings and orders having been entered thereon:

2. That pre-trial conference has heretofore been held and order entered thereon dated February 24, 1943.

3. That in and by said pre-trial conference order, R. C. Pribble of Orlando, Florida, was appointed as auditor to investigate and report on the matters contained in said order and has this day appeared before the Court giving his testimony as to the amount shown by the books of the defendant to be due and owing to the hereinafter named plaintiffs under the orders of this Court, and the report of the said R. C. Pribble is received and the said auditor is hereby discharged.

4. That the motion for summary judgment on behalf of the hereinafter named plaintiffs should be granted and judgment should be entered for said plaintiffs based upon their services as hourly or time workers and that the claims of said plaintiffs, together with the claims of all other plaintiffs for damages under the Wage and Hour Act, as piece workers, present issues of fact which should

be determined by a separate trial and final judgment should now be entered with reference to said hour hands, among other reasons for those set forth in the pre-trial conference order filed in this cause.

CONCLUSIONS OF LAW.

1. That the hereinafter named plaintiffs are entitled to recover of and from the defendant the respective amounts hereinafter set forth.

2. That the claims of all plaintiffs for damages under the Wage and Hour Act against the defendant for services as piece workers be held for separate trial and are not involved in this judgment.

It is thereupon, Considered, Ordered and Adjudged:

That the following named employees do have and recover of and from the defendant, Holly Hill Fruit Products, Incorporated, the amounts as follows:

Name of Plaintiff	Amount of Overtime	Liquidated Damages	Total
Austin, Albert	$ 54.18	$ 54.18	$ 108.36
Baker, Sallie	127.88	127.88	255.76
Baker, John	124.20	124.20	248.40
Black, Luther	26.80	26.80	53.60
Boyd, Archie	317.05	317.05	634.10
Bright, Norman	2.00	2.00	4.00
Bronson, Everett	28.55	28.55	57.10
Bronson, Lonnie J. L.	107.79	107.79	215.58
Brooks, Nannie	98.10	98.10	196.20
Bryant, James M.	46.58	46.58	93.16
Campbell, Edward	19.28	19.28	38.56
Campbell, Louise	73.30	73.30	146.60
Campbell, Louella	26.21	26.21	52.42
Campbell, Edgar	134.43	134.43	268.86

Name of Plaintiff	Amount of Overtime	Liquidated Damages	Total
Cliett, Buddy	67.50	67.50	135.00
Collins, Ramon	19.28	19.28	38.56
Douglas, Kirby	74.17	74.17	148.34
Duckworth, J. Ed.	12.50	12.50	25.00
Fowler, H. Aldean	3.68	3.68	7.36
Granger, Mellie	52.60	52.60	105.20
Green, Leroy	15.12	15.12	30.24
Hardin, John	153.51	153.51	307.02
Jones, Mattie C.	26.77	26.77	53.54
Kersey, E.	465.64	465.64	931.28
Lanier, Kirby	63.65	63.65	127.30
Lawrence, Bill	217.44	217.44	434.88
Lyles, Ernestine	89.78	89.78	179.56
Munson, Harold	60.00	60.00	120.00
Murphy, Sarah J.	26.70	26.70	53.40
Phinney, Valeria	34.46	34.46	68.92
Pierson, Louis F.	84.35	84.35	168.70
Prevatt, Rosa Lee	94.46	94.46	188.92
Prevatt, Susie	65.53	65.53	131.06
Rigdon, William	5.09	5.09	10.18
Robinson, J. L.	13.63	13.63	27.26
Rowland, W. R.	67.50	67.50	135.00
Sly, T. B.	90.95	90.95	181.90
Streetman, Ernest	20.59	20.59	41.18
Streetman, J. W.	128.00	128.00	256.00
Streetman, Ruth B.	44.10	44.10	88.20
Thompson, Fannie	89.50	89.50	179.00
Thompson, Madeline	1.28	1.28	2.56
Usery, Lewis	62.90	62.90	125.80
Wallis, J. H.	124.61	124.61	249.22
Wooten, Dallas	61.15	61.15	122.30
Wooten, Dee	196.31	196.31	392.62
Wrenn, J. M.	110.84	110.84	221.68
Totals	3,829.94	3,829.94	7,659.88

It is Further Ordered and Adjudged:

That the above named Plaintiffs do have and recover of and from the defendant the sum of $1265.00 hereby allowed as a reasonable attorney's fee to be awarded to the above named plaintiffs.

It is Further Ordered and Adjudged:

That the taxation of costs in this action await the determination of the claims for back pay and overtime wages for piece workers.

Done and Ordered in Chambers at Orlando, Florida, in said District, this the 9th day of April, A. D. 1943.

WILLIAM J. BARKER,
United States District Judge.

On the 14th day of April, Appellant filed its NOTICE OF APPEAL in words and figures as follows:

In the United States District Court in and for the Southern District of Florida, Tampa Division.

Wilma Addison, et al., Plaintiffs,
vs. No. 441 Civ.-T.
Holly Hill Fruit Products, Inc., a Florida Corporation, Defendant.

Notice is hereby Given that Holly Hill Fruit Products, Inc., a corporation, does hereby appeal to the Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this cause by the Hon. William J. Barker, on the 9th day of April, 1943, and recorded in Civil Order Book 4, at page 743.

STATEMENT OF POINTS TO BE RELIED ON BY APPELLANT.

228 (Title Omitted.)

First Point.

The Court erred in his order of January 26, 1943, in sustaining motion of plaintiffs to strike the third defense of the defendant.

Second Point.

The Court erred in his order of January 26, 1943, in sustaining motion of plaintiffs to strike the fourth defense as amended of the defendant.

Third Point.

The Court erred in his order of January 26, 1943, in striking the fifth defense as amended filed by the defendant.

Fourth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in finding that the defendant operated a commercial canning plant during the two seasonal periods in controversy in this cause.

Fifth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in finding that the defendant did not obtain all its commodities from farms in the "immediate locality" or "general vicinity" as defined by the Administrator.

Sixth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in finding that an appreciable portion of the commodities came from a distance beyond the range of usual farm travel.

Seventh Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in finding that considerable fruit canned in the defendant's establishment came from neighborhoods as far away as more than 20 miles, 20 miles, 14 miles and 7 or 8 miles.

Eighth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in finding:

"VIII. In and during said two seasonal periods of operation, the establishment of the defendant is not located in the 'open country' or a 'rural community', as defined by the Administrator in his said several definitions, because there was within the range of usual farm travel, at a point not more than four miles away, a town of more than 2500 population according to the applicable United States census."

Ninth Point.

The Court erred in his findings entered on January 26, 1943, in concluding as a matter of law:

"A. If the several applicable definitions of the phrase 'area of production' as made by the Administrator are

void, as claimed in the Fifth Defense, as amended, then the defendant is not entitled to the total exemption given by Section 13 (a) (10) of the Fair Labor Standards Act of 1938 * * *".

Tenth Point.

The Court erred in concluding as a matter of law that the defendant had failed to prove that it was entitled to the total exemption under Section 13 (a) (10) of the Fair Labor Standards Act of 1938 "in, for, or during any of the periods involved in this controversy".

Eleventh Point.

The Court erred in concluding as a matter of law that each of the Administrator's several definitions of "area of production" is a valid definition when applied to defendant's establishment, having in view the purpose of the act to raise sub-standard labor conditions in industrial plants.

Twelfth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in failing and refusing to follow the opinion of this Court in the case of *Fleming vs. Farmers Peanut Company*, 128 Fed. (2d) 404.

Thirteenth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in concluding as a matter of law that the haulage provision in the Administrator's several definitions should be determined by "road miles" and not a radius distance "as the crow flies" from the plant.

Fourteenth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in concluding as a matter of law that the town of Davenport where the establishment of the defendant is located is not included in "open country" or "rural community" because Haines City, Florida, with a population of more than 2500 is located within the "immediate locality" or "general vicinity" of the establishment.

Fifteenth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in concluding as a matter of law that the Fifth Defense filed by the defendant admitted that the establishment of the defendant was being operated under sub-standard labor conditions and that by reason of said alleged admissions the exemption provided by Congress under Section 13(a)(10) of the Act was not applicable to defendant's establishment.

Sixteenth Point.

The Court erred in his findings of fact and conclusions of law entered on January 26, 1943, in holding that defendant's establishment was not entitled to the exemption under Section 13(a)(10) of the Act because other competing canning establishments were located within "immediately locality" and "general vicinity" of defendant's establishment.

Seventeenth Point.

The Court erred in his order of January 26, 1943, in holding that the citrus industry was not seasonal until

August 24, 1940, the date of the finding of seasonality by the Administrator and that such finding could not be retroactive.

Eighteenth Point.

The Court erred in his order of January 26, 1943, in finding that the exemption under Section 7(b)(3) of the Act is only available to the defendant if the defendant paid overtime to employees working in excess of 12 hours a day or 56 hours a week and that because the third defense of the defendant fails to show that the defendant so paid its employees the exemption is not applicable.

Nineteenth Point.

The Court erred in his order of January 26, 1943, in finding that the third defense of the defendant was insufficient in point of law.

Twentieth Point.

The Court erred in his order of January 26, 1943, in holding that this defendant was not entitled to the 14 weeks exemption under section 7(b)(3) of the Act because it had failed to designate said weeks prior to the institution of the suit.

Twenty-first Point.

The Court erred in his order of January 26, 1943, in holding that the claim for 14 weeks exemption under Section 7(c) is inconsistent with the claim of total exemption under section 13(a)(10) of the Act.

Twenty-second Point.

The Court erred in his order of January 26, 1943, in holding that the designation of the 14 weeks exemption

under Section 7(c) of the Act is a matter of agreement between the employer and employee.

Twenty-third Point.

The Court erred in his order of March 24, 1943, in denying petition for rehearing filed by the defendant.

Twenty-fourth Point.

The Court erred in his order of March 24, 1943, in striking the first and second additional defenses filed by the defendant.

Twenty-fifth Point.

The Court erred in entering the final judgment on April 9, 1943.

It is hereby stipulated by and between counsel for the appellant and counsel for the appellees that the above and foregoing statement of the case correctly and properly shows how the questions arose and were decided in the District Court, and shows all pleadings, that the questions presented on this appeal can be determined without an examination of all the pleadings, evidence and proceedings in the Court below, that the foregoing statement of facts sets forth so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the Appellate Court, that it likewise includes a true and correct copy of the final judgment appealed from, same being final judgment entered on April 9th, 1943, and a copy of the notice of appeal from said judgment filed on April 9th, 1943, together with a concise statement of the points to be relied upon by the Appellant.

It is further stipulated and agreed by counsel that the above and foregoing statement complies with Rule 76 of the Federal Rules of Civil Procedure and that the same may be approved by the District Judge and may be certified to the Circuit Court of Appeals as a record on appeal in this cause.

G. P. GARRETT,
ELLIS F. DAVIS,
Attorneys for Appellees.

DOZIER DeVANE,
COUNTS JOHNSON,
R. B. HUFFAKER,
G. L. REEVES,
Attorneys for Appellant.

The above and foregoing statement of the case is approved by me on this 17th day of April, 1943, as a compliance with Rule 76 of the Rules of Civil Procedure and as a proper and correct record on appeal.

WILLIAM J. BARKER,
District Judge.

State of Florida,
County of Hillsborough.

I, EDWIN R. WILLIAMS, Clerk of the above styled Court Do Hereby Certify that the above and foregoing is the original agreed statement of the case lodged in this office by the parties thereto on the 17th day of April, 1943, and I Do Further Certify that the same was duly approved by the District Judge prior to the filing thereof.

In Witness Whereof I have hereunto set my hand and seal of this Court on this 17th day of April, A. D. 1943.

EDWIN R. WILLIAMS,
(Seal) Clerk of the United States District Court in and for the Southern District of Florida, Tampa Division,
By JULIAN A. BLAKE,
Deputy Clerk.

[fol. 224] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of June 1st, 1943

No. 10643

HOLLY HILL FRUIT PRODUCTS, INC.,

versus

WILMA E. ADDISON, et al.

On this day this cause was called, and, after argument by G. L. Reeves, Esq., for appellant, and George Palmer Garrett, Esq., and Ellis F. Davis, Esq., for appellees, was submitted to the Court.

[fol. 225] OPINION OF THE COURT AND SPECIALLY CONCURRING OPINION OF WALLER, CIRCUIT JUDGE—Filed June 24th, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10643

HOLLY HILL FRUIT PRODUCTS, INC., Appellant,

versus

WILMA E. ADDISON, et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

June 24, 1943

Before Hutcheson, Holmes, and Waller, Circuit Judges

HOLMES, Circuit Judge:

Appellant is a cooperative corporation engaged in the packing and canning of citrus fruit at Davenport, Florida.

This is a suit by its employees for wages, overtime, and statutory penalties alleged to be due them by reason of the failure of their employer to comply with the minimum-wage and [fol. 226] maximum-hour requirements (Sections 6 and 7) of the Fair Labor Standards Act.[1] A final judgment was entered in favor of some of the employees, and the employer has appealed.

It is admitted that the wage-and-hour requirements of the Act were not observed, but appellant contends that they were not applicable to its employees because of the provisions of Section 13(a) (10) of said Act. This section provides that Sections 6 and 7 of the Act shall not apply with respect to any individual employed within the area of production (as defined by the Administrator) engaged in handling, packing, storing, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market. It is plain that these employees were engaged in handling, packing, preparing, and canning agricultural or horticultural commodities for market; and the decisive question is whether they performed these activities within the area of production as defined by the Administrator.

Appellant's operations are seasonal, conforming with the harvesting of citrus fruit, and during the two seasons involved in the period covered by this suit it engaged in business from November 14, 1938, to May 26, 1939; and from November 16, 1939, to March 30, 1940. The Fair Labor Standards Act became effective on October 20, 1938, and as of that date the Administrator promulgated Section 536.2 of his Regulations, which provided that an employee was within the area of production under Section 13(a) (10) of the Act if the agricultural or horticultural commodities were obtained by the establishment where he was employed from farms in the immediate locality and the number of employees in such establishment did not exceed seven. The regulation was amended on April 30, 1939, by the addition of a paragraph providing that, with respect to the preparation or canning of perishable or seasonable fresh [fol. 227] fruits, an employee was within the area of production if the employer's establishment was located in a rural community and obtained all of its products from farms

---

[1] 29 U. S. C. A., Sec. 201 et seq.; 52 Stat., 1060 et seq.

in the immediate locality. It was further provided that the term "rural community" should not include any town of 2500 or greater population, and the term "immediate locality" should not include any distance of more than 10 miles.

Effective as of June 17, 1939, the regulation again was amended to provide that a worker employed within the area of production within Section 13(a) (10) if he performed his packing or canning operations on commodities that came from farms within the general vicinity of the employer's establishment, and the number of employees engaged therein did not exceed seven.

Our first problem is to determine whether these appellees were employed within the area of production from November 14, 1938, to April 19, 1939, as defined by the regulation effective during that period. In the case of *Fleming v. Farmers Peanut Co.*, 128 F. (2) 404, this court held that the limitation in the regulation as to the number of employees working together in the establishment had no relation to area of production and was void. Conceding without deciding that the remaining portion of the regulation is valid, the question is whether the commodities used by the establishment came from farms in the immediate locality. The evidence shows that 97.24 per cent of the commodities came from farms located within 10 miles of the establishment, and 96/100 of one per cent could not be traced; the balance came from farms less than 25 miles distant. The overwhelming percentage of the fruit obtained from farms within 10 miles was certainly within the immediate locality, and it would be most unreasonable to say that the negligible quantity obtained from a [fol. 228] slightly greater distance should affect the statutory concept of area of production.

The regulation in force during appellant's operations from April 30, 1939, to May 26, 1939, provided that employees engaged in packing or canning perishable fruits were within the area of production if they worked in an establishment that was located in a rural community and that obtained all of its products from farms in its immediate locality. The regulation defined "rural community" to exclude any city or town of 2500 or greater population, and "immediate locality" to exclude any distance of more than 10 miles. Appellant's establishment was located in Daven-

port, Florida, a town of 650 people, and during this period more than 97 per cent of the commodities processed came from farms located within 10 miles of the plant, as we have heretofore indicated. The purchase of so great a portion within a 10-mile radius of the plant, and the acquisition of the negligible balance from farms within 25 miles, were sufficient to prove that the products were obtained within the immediate locality. The language of the regulation should be construed to mean that *substantially all* of the commodities must be obtained within 10 miles of the establishment if the 10-mile limitation is to be held valid. It would be wholly arbitrary and unreasonable to say that employees in one plant are within the area of production if 10,000 bushels of fruit canned are purchased within 10 miles, and the employees in another plant are outside the area of production if only 100 of the 10,000 bushels canned were purchased 11 miles away and the balance was purchased within 10 miles.

During appellant's operations from November 16, 1939, to March 30, 1940, the regulation in force provided that one was employed in the area of production within Section 13 (a) (10) if engaged in handling or canning agricultural or horticultural commodities that came from farms in the [fol. 229] general vicinity of the establishment and the number of employees so engaged did not exceed seven. Again, on the authority of *Fleming v. Farmers Peanut Co., supra*, we disregard as void the limitation with respect to the number of employees, and consider only whether the fruits processed came from within the general vicinity of the establishment. During this period, 91.39 per cent of the fruit processed was purchased from farms within 10 miles of the plant, and an additional 4 per cent came from farms within 25 miles; none was known to have come from any greater distance. In ordinary usage, the words *general vicinity* indicate a larger area than is meant by *immediate locality*, and a distance of 25 miles in this day of highly developed travel facilities is not beyond the range of usual farm travel.[2]

The Administrator must define fairly and truly the area of production; but he cannot create such area, or arbitrarily limit it within false and artificial boundaries. On the other

---

[2] Cf. Fleming v. Farmers Peanut Co., 128 F. (2) 404.

hand, this court should not attempt either to legislate or to define the area of production, but only to declare the law applicable to the facts before it, aided by the Administrator's definition, and striking down invalid portions thereof only to the extent that may be necessary in order correctly to dispose of the case. Considering the facts of this case with reference to the location of appellant's plant, it seems to us fairly certain that all of the citrus fruit processed therein came from the area of production as defined by the Administrator.

Finally, we conclude that these appellees were employed within the area of production during the entire period involved here, and that the minimum-wage and maximum-hour provisions of the Act did not apply to them. This result precludes the necessity of discussing the alternative [fol. 230] contentions made by appellant, one of which is that during both periods in controversy the regulation was wholly arbitrary and void except as to those parts that required the material to come from the immediate locality or general vicinity of the establishment. If this contention were sustained, the result would be the same and the exemption would be allowed, because 36.3 per cent of the 48,000,000 boxes of citrus fruit produced annually in Florida was produced in Polk County where appellant's plant was located, being approximately three times as much as was produced in any other county in Florida. The next largest production was in Orange County, approximately 25 miles north of appellant's plant, located at or near the exact geographical center of the largest citrus growing area of any state in the United States. Since it is not necessary to decide the issue presented by this contention, in order correctly to dispose of the case, we refrain from doing so.

The judgment appealed from is reversed, and the cause remanded to the district court for further proceedings not inconsistent with this opinion.

WALLER, Circuit Judge, specially concurring:

It is impossible to study the Fair Labor Standards Act without reaching the definite conclusion that Congress intended to exempt the farmers, in the growing and marketing of their crops, from the provisions and also the effect of that Act. The farmer has been for many years a favorite of Congress, which body recognized the impecunious

position of the average farmer throughout the nation, and that the farmer was unable to pay high wages for labor either in the production or in the marketing of his crops. [fol. 231] It is a known economic fact that one of the chief problems of a farmer is how to market that which he grows, and Congress was aware of that problem. It, therefore, refrained, or intended to refrain, from adding any further burdens or expenses to the farmer in the marketing of his crop, particularly fresh fruits and vegetables of a seasonal nature. In this endeavor Congress provided that those engaged in canning of seasonal fruits and vegetables within the area where such fruits and vegetables were produced would not come within the coverage of the Act during certain seasonal operations. It is reasonable to assume that if the canner who purchases the farmer's fruits and vegetables is required to work his employees shorter hours and pay them higher wages, the added costs will be reflected in a reduction of the price which such canner will pay to the farmer for his products. It is believed that this is one of the things Congress sought to avoid by the exemption in Sec. 213 (a) (10) of the Act.

There are many who believe that the term "area of production" had reference to large geographical areas such as "the citrus belt", "the cotton belt", "the beet sugar belt", "the sugar cane belt", "the corn belt", and the like, and there is much logic in that thought when considered in the light of the purpose of Congress to undertake to protect the farmer against influences adverse to the ready marketing of his products at a fair price.

However, the Administrator has adopted no such broad concept of the term "area of production" and, in fact, has generally disregarded what is, in fact, the area of production, but has converted the actual and factual area of production into an arbitrary creation of his own. The real question is whether the actual area of production is to be disregarded and the definition of the Administrator is [fol. 232] to control rather than the intent of Congress not to handicap the farmer in the marketing of his produce. In short, whether the term "area of production" is to control, or the bracketed phrase "(as defined by the Administrator)" is to control. To put it differently, can the Administrator be said to have defined the area of production of certain commodities when in truth and in fact he has *not*

defined such area of production? Congress can see a rabbit run across a State line and declare it was a lion, and a lion it is, but can the Administrator do that? My thought is that the Administrator must define the area of production in fact and without regard to the number of employees, without regard to the location of a city, and without regard to any factor other than the area within which such fruits and vegetables are customarily, in the usual course of business, brought by the farmer to be marketed or processed.

There is no justification in the Act for restricting the canning or processing plant to any number of employees. There is no justification in the Act, nor in reason, for exempting only canning plants located in cities of not more than twenty-five hundred. There is no justification in the Act, nor in reason, for limiting the area of production to a circle having radii of ten miles if in truth and in fact the farmer living beyond the circumference of such a circle customarily brings his produce to market at a point more remotely removed than ten miles or to a plant located in a city of a population in excess of twenty-five hundred. Congress did not intend to penalize the farmer who lived up at the head of the creek and out of the twenty-mile circle by requiring him to haul his produce to a cannery at a point different from that at which he customarily marketed his produce and made his purchases. It did not intend to require a farmer to haul his produce to a cannery in a town having not more than twenty-five hundred people. Nor did [fol. 233] it intend to penalize the farmer living near a town of more than twenty-five hundred by saying: "You cannot haul your produce to the largest town near which you live unless you want to sell your produce for less money to a canner who has to pay higher wages than the country canner does." Nor did it intend to make it cost the canner more to can the backwoodsman's fruit than it cost it to can the fruit of the suburbanite.

In conclusion, it is my view that the *actual* area of production is the area that the Administrator must define. If he wishes to be technical some of the factors that he might reasonably take into consideration are: (a) availability of other canning plants; (b) freedom of access by good roads; (c) the capacity of the canning plant to handle the produce; (d) the efficiency of the plant; (e) the quantity of produce raised in the area in relation to plant capacity; (g) and in the case of a cooperative cannery (as in the present case)

the location of the members of the cooperative. There are many factors of far more relevancy or pertinency than the number of employees or the population of the town in which located, or the radius of an arbitrary circle.

Until and unless a reasonable definition has been made of the actual "area of production" it seems to me that the Courts would be justified in adopting as the "area of production" that area within which farmers customarily, in the usual course of business, bring, or cause to be brought, their produce to be canned or marketed.

"Area of production" readily suggests something akin to the "trade area" of a town, because it is the habit of the farmers to trade in the same town where they market their produce.

[fol. 234] I concur in the opinion of the Court but think that the opinion might well have gone further in its discussion of the term "area of production".

[fol. 235] JUDGMENT

Extract from the Minutes of June 24th, 1943

No. 10643

HOLLY HILL FRUIT PRODUCTS, INC.,

versus

WILMA E. ADDISON, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered, adjudged and decreed that the appellees, Wilma E. Addison, and others, be condemned, in

solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Waller, Circuit Judge, concurs specially."

[fol. 236] MOTION AND ORDER STAYING MANDATE—Filed July 12, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

HOLLY HILL FRUIT PRODUCTS, INC., Appellant,

vs.

WILMA E. ADDISON, et al., Appellees

MOTION FOR STAY OF MANDATE

To the Honorable Circuit Court of Appeals for the Fifth Circuit:

Come now the appellees in the above styled cause and show unto this Honorable Court that they intend to apply to the Supreme Court of the United States for a writ of certiorari from the decision of this Court on June 24, 1943 of the appeal in the above styled cause, reversing the decree of the District Court of the United States for the Southern District of Florida.

And thereupon said appellees move this Court to stay the mandate in this cause pending disposition of said application for writ of certiorari.

(Signed) Ellis F. Davis, G. P. Garrett, As Counsel for Appellees.

[fol. 237] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 10643

HOLLA HILL FRUIT PRODUCTS, INC., Appellant,

versus

WILMA E. ADDISON, et al., Appellees

On Consideration of the Application of the appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at Yazoo City, Mississippi, this 12th day of July, 1943.

(Signed) E. R. Holmes, United States Circuit Judge.

[fol. 238] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit of Appeals for the Fifth Circuit is granted. The Solicitor General is invited to file a brief amicus curiae if he is so advised.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.